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# **AUDIT OF CONTRACTING AT THE CANADIAN INTELLECTUAL PROPERTY OFFICE**

**Final Report**

**Audit and Evaluation Branch**

**December 2005**

**Tabled and approved by DAEC  
on April 13, 2006**

**Canada**

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## 1.0 EXECUTIVE SUMMARY / CONCLUSIONS

The Canadian Intellectual Property Office (CIPO), a special operating agency, is responsible for the administration and processing of the greater part of intellectual property in Canada. Over the last several years, CIPO has experienced unprecedented growth and the number of employees well exceeds 850.

A departmental contracting framework initiated by the Corporate Comptroller's Branch in the year 2000 committed the Audit and Evaluation Branch (AEB) to performing annual contracting audits on two branches within Industry Canada. CIPO was selected as one of the branches to be audited in 2004-2005 to complement a scheduled Management Control Framework (MCF) audit. CIPO was also selected based on the level of contracting activity.

In carrying out its contracting activities, the Canadian Intellectual Property Office is required to adhere to the Financial Administration Act and the policies and guidelines of Treasury Board (Government Contracting Regulations) and Industry Canada's Contracting policy. CIPO recently consolidated all contracting exceeding \$5,000 under the Contracting and Procurement Unit of the Planning, Finance and Administration Branch. This centralized Unit was established in April 2004 and has developed internal contracting procedures which represents a key step in implementing a risk-based approach to contract management.

Our assessment found that the fundamentals of the current contracting process are sound. It is believed that the practices in place within the Canadian Intellectual Property Office are appropriate given the nature of the contracting being conducted. The audit found no material deviations from the applicable policies, acts and regulations governing contracting. There was no evidence that the Canadian Intellectual Property Office had exceeded its authorities.

The introduction of a Contract Request Summary process for all service contracts greater than \$5,000 is effectively a risk-based approach to reviewing contracting requirements. This requires managers to identify whether they have considered alternative means of completing the work, whether the supplier has a history of related work and to justify any amendments. It is a significant step in accountability and control.

Included in our review were contracts for the provision of minor construction services and services of movers/installers for furnishings processed as Requests for Proposal. These files were initiated prior to the implementation of the Contracting and Procurement Unit. The former process was labour intensive in that it required detailed evaluations, yet they were issued for only one year. The same services have been contracted for, or are in the process of being renewed, under the new process and now provide the benefit of a multi-year option feature which will reduce the level of effort for all involved, from project manager to contracting unit. This is a demonstration of the type of benefit achieved from having professional advice and assistance available from the Contracting and Procurement Unit.

## **2.0 BACKGROUND**

A departmental contracting framework initiated by the Corporate Comptroller's Branch in the year 2000 committed the Audit and Evaluation Branch (AEB) to performing annual contracting audits on two branches within Industry Canada.

The branches selected for the audit were determined in consultation with the Contracts and Material Management (CMM) Division of the Comptroller's Branch. CIPO was selected as one of the branches to be audited to complement a scheduled Management Control Framework (MCF) audit. CIPO was also selected based on the level of contracting activity.

## **3.0 AUDIT OBJECTIVES**

The objective of the audit is to provide management with independent assurance that the contracting processes carried out within CIPO are done in accordance with:

- the principles of best value and open access;
- Government Contract Regulations, Treasury Board Secretariat Contracting Policies and Industry Canada policies and procedures;
- the principles of fairness and transparency; and
- operational requirements.

## **4.0 AUDIT SCOPE**

The audit covered the period from April 1, 2004 to March 31, 2005. The types of contracts reviewed included:

- contracts through Public Works and Government Services Canada (PWGSC);
- call-ups for goods;
- call-ups for services;
- purchase orders for goods;
- purchase orders for services;
- supply arrangements;
- service contracts;
- temporary help contracts;
- intergovernmental letters of agreement;
- construction; and
- task authorizations.

In carrying out its contracting activities, the Canadian Intellectual Property Office is required to adhere to the Financial Administration Act and the policies and guidelines of Treasury Board (Government Contracting Regulations) and Industry Canada's Contracting policy. The

Canadian Intellectual Property Office has also developed some internal contracting procedures which were used to assess the adherence to procedures.

## **5.0 METHODOLOGY**

Thirty nine contracts were selected for review to determine whether there was sufficient evidence that the contracting process complied with applicable policies, acts and regulations. The sample represents approximately \$3,000,000 in value, or about 15% of the contracting activity of the Canadian Intellectual Property Office during the review period.

Initially 29 files were selected using ACL software to provide a random sample. These files were supplemented by a selection of ten higher risk files made in consultation with the contracting authority to ensure that an appropriate mix of type, program and dollar value items were subject to review. Some emphasis was placed on reviewing contracts for professional services.

In addition, 25 call-ups for Temporary Help were reviewed to determine if they presented any particular risk to CIPO.

Interviews were conducted with staff from Corporate Contracts and Material Management to review applicable policies and contracting risk areas. In addition, staff and managers of the Planning, Finance and Administration Branch at CIPO were interviewed.

## **6.0 MANAGEMENT CONTROL FRAMEWORK**

The Canadian Intellectual Property Office has a documented processes related to contracting. All participants in the process understand their roles and responsibilities and work closely throughout the process.

Contracts which appear to pose the highest potential risk for CIPO, due to their high dollar value and technical nature, are forwarded to Public Works and Government Services for processing. This includes the major contracts in place to support Continuous System Improvement Program (CSIP). Once the major contracts have been put in place, CIPO managers issue task authorizations to have specific projects carried out within the overall framework. This is a risk management strategy common among government departments and agencies.

We believe the practices in place within the Canadian Intellectual Property Office are appropriate to the nature of the contracting conducted.

Furthermore, the Canadian Intellectual Property Office has some “best” practices. In accordance with a risk-based approach, CIPO has consolidated all contracting greater than \$5,000 under the Procurement and Contracting Unit of the Planning, Finance and Administration Branch.

Additionally, a Contract Request Summary process is in place for all service contracts greater than \$5,000. This supplements the risk-based review by requiring managers to:

- identify whether they have considered alternative means of completing the work;
- whether the supplier has a history of related work; and
- to justify any amendments.

## 7.0 SUMMARY OF RESULTS AND RECOMMENDATIONS

It is our assessment that the fundamentals of the current contracting process are sound. We found no instances where there was the appearance that the Canadian Intellectual Property Office of Canada had exceeded its authorities. We found no material deviations from the applicable policies, acts and regulations governing contracting as demonstrated by the following summary of findings.

<b>Summary of Transaction Analysis</b>		
<b>Nature of Deviation</b>	<b># of Deviations</b>	<b>Comments</b>
Inadequate documentation	1	Evaluation form not dated and signed by all participants
Contracts not signed before start date	2	One contract not signed and one signed a few days after negotiated start date - this contract precedes new procedures of the Contracting Unit

The Canadian Intellectual Property Office's contracting transactions can be divided into several general categories:

- general administrative & professional services;
- Memoranda of Understanding with other government agencies;
- professional informatics services in support of CSIP; and
- Temporary Help.

Our review revealed areas where some adjustments to administrative procedures would improve the overall process. They relate to contracts for Temporary Help and contract documentation in general.

### 7.1 TEMPORARY HELP

CIPO management requested a specific review of the activity relating to temporary help call-ups to determine if there was a particular risk. Therefore, in addition to the files which were drawn to ensure adequate coverage of all activities, an additional 25 files were selected for analysis.

Call-ups for temporary help services are made directly by managers. Our review revealed no anomalies to the current TB or departmental processes or procedures. The total value of temporary help call-ups in 2004/05 was approximately \$330,000. Call-up activity was spread across all branches, with no evidence of contract splitting or trends towards employer / employee relationships.

Consistent with Industry Canada policy, CIPO has internal controls which require any temporary help contract exceeding 20 weeks to have the support of the next level of management.

We did note however, that almost half of all temporary help contracting was awarded to one firm. While this is not contrary to the guidelines surrounding temporary help call-ups, more effort should be made to issue call-ups in a more equitable manner.

During our review several files outside of the review period were made available. Of these, two were issued without reference to the Public Works website. While the rates charged were in line with those published on the site, it may indicate that not all staff and managers are familiar with the proper processes involved. The Contracting and Procurement Unit has recently retained a new staff resource and a priority for this individual will be the provision of additional training for staff and managers in the use of the temporary help website.

We also noted during our review that the Contracting and Procurement Unit provides CIPO Human Resources with a monthly listing of all new temporary help call-ups against the existing PWGSC Standing Offers. This is seen to assist HR in their determination if additional staffing actions are required.

To improve overall monitoring capabilities several improvements to current processes could be introduced.

### **Recommendation**

It is recommended that the CIPO Contracting and Procurement Unit ensure that a copy of all temporary help call-ups forwarded to finance for payment be accompanied by a copy of the PWGSC web page from which the firm was selected to demonstrate compliance with procedure.

### **Recommendation**

It is recommended that the CIPO Contracting and Procurement Unit ensure that all temporary help call-ups which exceed 20 weeks, either originally or through amendment, be supported by a completed Contract Amendment Request Summary.

**Recommendation**

It is recommended that the Contracting and Procurement Unit continue its planned training in the use of the PWGSC website for making temporary help Call-ups and include a strong encouragement to “share the work” in a more equitable manner.

**7.2 DOCUMENTATION**

TBS policy states that:

“Contract files should be established which will provide a complete audit trail containing details on matters such as options, decisions, approvals, amendments, if any, etc., and identifying the officials or authorities who made them. This is extremely important for answering questions and evaluating results.”

PWGSC has no internal guidelines other than the following element of their contracting manual which states:

**2.002 (23/06/94)** Keep files up to date. A current file serves as a historical record and an accurate audit trail in the event of a financial review, subsequent legal action or an official complaint. Current files are also important for anyone who may have to consult the file or assume responsibility for it at a later date.

In our review of the Canadian Intellectual Property Office contract files we noted that there were some gaps in the available information on the actual contract / payment files in providing complete information for an adequate audit trail.

Currently, contracting information is maintained by three separate entities (three file systems): Finance, for payment purposes, Contracting and Procurement Unit for actual details of purchasing and/or contracting activities and Project Managers who retain much of the detailed background, particularly as it applies to task authorizations, where call-ups are made by project managers.

A significant portion of files reviewed related to the issuance of task authorizations against contracts put in place competitively through PWGSC. Project Managers maintain detailed records on file to document the Statement of Work, the estimated level of effort required to complete the work and assurance that proposed resources have the necessary qualifications and experience to carry out the assignments. There are internal processes, similar to the use of a Contract Request Summary, to obtain necessary approvals. The documents used internally to obtain appropriate approvals are the CIPO Task Authorization Form and the Continuous System Improvement Program (CSIP) Replacement Form, both of which contain much of the key information required in a Contract Request Summary.



Some files relating to Requests for Proposals contained the necessary evaluations of submissions, however not all were appropriately signed and dated.

### **Recommendation**

It is recommended that the CIPO Contracting and Procurement Unit ensure that the current contract file be deemed the master file and all information held in other locations be clearly identified and linked/cross-referenced to this file, including files held by the Project Authority and/or Project Manager.

Additionally, when IT Project Managers issue task authorizations, they should provide signed copies of the supporting CIPO Task Authorization Form and the Continuous System Improvement Program (CSIP) Replacement Form to the Contracting and Procurement Unit.

### **Recommendation**

It is recommend that the CIPO Contracting and Procurement Unit ensure that the contract files relating to Requests for Proposals contain, as a minimum, the following information: Purchase Requisition, Contract Request Summary, Request for Proposal, MERX documentation if open or electronic bidding, list of firms who responded, summary of the technical evaluation (if applicable), copy of regret letters to unsuccessful bidders, a list of any firms requesting debriefing, signed copy of contract, and any amendments / support for such amendments and required information on any special situation or condition pertaining to the overall contracting process which may not be in accordance with the GCRs. A draft suggested contract file checklist to assist with this activity is attached as Appendix A.

### **Recommendation**

The CIPO Contracting and Procurement Unit should ensure that all RFP evaluations be consolidated onto a formal summary sheet and signed and dated by all individuals involved in the evaluation process.

## **8.0 BEST PRACTICES**

CIPO recently consolidated all contracting greater than \$5,000 under the Contracting and Procurement Unit of the Planning, Finance and Administration Branch. This represents a key step in implementing a risk-based approach to managing contracting activity.

The introduction of a Contract Request Summary process for all service contracts greater than \$5,000 is effectively a risk-based approach to reviewing contracting requirements. This requires Managers to; identify whether they have considered alternative means of completing the work, whether the supplier has a history of related work and to justify any amendments. It is a

significant step in accountability and control.

Included in our review were contracts for the provision of minor construction services and services of movers/installers for furnishings processed as Requests for Proposal. These files were initiated prior to the implementation of the Contracting and Procurement Unit. The former process was labour intensive in that it required detailed evaluations, yet they were issued for only one year. The same services have been contracted for, or are in the process of being renewed, under the new process and now provide the benefit of a multi-year option feature which will reduce the level of effort for all involved, from project manager to contracting unit. This is a demonstration of the type of benefit achieved from having professional advice and assistance available from the Contracting and Procurement Unit.

APPENDIX A

Draft Suggested Contract File Checklist

Contract File Checklist				
Project Title:		File #		
		Applicable	On File	Initial / Date
1	Purchase Requisition on file			
2	Contract Request Summary on file			
3	Request for proposal on file			
4	Evaluation criteria on file			
5	MERX documentation if open or electronic bidding			
6	List of firms who responded			
7	Signed and dated summary of the technical evaluation			
8	Copy of letter of notification of award			
9	Signed copy of contract			
10	Copy of winning proposal			
11	Cross reference to other submitted proposals			
12	Copy of regret letters to unsuccessful bidders			
13	List of firms / individuals requesting debriefing			
14	Amendment #1 and supporting documentation			
15	Amendment #2 and supporting documentation			
16	Information on any special situation or condition pertaining to the overall contracting process which may not be in accordance with the GCRs	<b>Comments:</b>		

**MANAGEMENT ACTION PLAN  
AUDIT OF CONTRACTING AT THE  
CANADIAN INTELLECTUAL PROPERTY OFFICE**

<b>RECOMMENDATION</b>	<b>MANAGEMENT RESPONSE AND PROPOSED ACTION</b>	<b>RESPONSIBLE OFFICIAL</b>	<b>ACTION COMPLETION DATE</b>
It is recommended that the CIPO Contracting and Procurement Unit ensure that a copy of all temporary help call-ups forwarded to finance for payment be accompanied by a copy of the PWGSC web page from which the firm was selected to demonstrate compliance with procedure.	CIPO agrees with this recommendation. CIPO Contracting and Procurement Unit in conjunction with the Accounts Payable Unit, will ensure that a copy of all temporary help call-ups forwarded to finance for payment be accompanied by a copy of the PWGSC web page from which the firm was selected.	Senior Contracts and Procurement Advisor	April 1, 2006
It is recommended that the CIPO Contracting and Procurement Unit ensure that all temporary help call-ups which exceed 20 weeks, either originally or through amendment, be supported by a completed Contract Amendment Request Summary.	CIPO agrees with this recommendation. CIPO Contracting and Procurement Unit in conjunction with the Accounts Payable Unit, will ensure that a completed copy of the Contract Amendment Request Summary (CARS) be forwarded to Finance	Senior Contracts and Procurement Advisor	April 1, 2006
It is recommended that the Contracting and Procurement Unit continue its planned training in the use of the PWGSC website for making temporary help Call-ups and include a strong encouragement to “share the work” in a more equitable manner.	CIPO agrees with this recommendation. CIPO Contracting and Procurement Unit will provide training sessions as a back-up to PWGSC training to all website users that request it. Note: PWGSC is now requesting training sessions for all website users prior to providing them with a password.	Senior Contracts and Procurement Advisor  PWGSC	March 1, 2006  Date to be determined following PWGSC schedule.

RECOMMENDATION	MANAGEMENT RESPONSE AND PROPOSED ACTION	RESPONSIBLE OFFICIAL	ACTION COMPLETION DATE
<p>It is recommended that the CIPO Contracting and Procurement Unit ensure that the current contract file be deemed the master file and all information held in other locations be clearly identified and linked/cross-referenced to this file, including files held by the Project Authority and/or Project Manager.</p> <p>Additionally, when IT Project Managers issue task authorizations, they should provide signed copies of the supporting CIPO Task Authorization Form and the Continuous System Improvement Program (CSIP) Replacement Form to the Contracting and Procurement Unit.</p>	<p>CIPO agrees with this recommendation. CIPO Contracting and Procurement Unit will ensure that all information held in other locations by Project Authority or Project Manager be identified and linked in the master file held by CPU.</p> <p>CIPO agrees with this recommendation. CIPO Contracting and Procurement Unit in conjunction with the Accounts Payable Unit, will ensure that a copy of all CIPO TA Forms and the CSIP Replacement Form be forwarded to CIPO finance.</p>	<p>Senior Contracts and Procurement Advisor</p> <p>Senior Contracts and Procurement Advisor</p>	<p>March 1, 2006</p> <p>April 1, 2006</p>

RECOMMENDATION	MANAGEMENT RESPONSE AND PROPOSED ACTION	RESPONSIBLE OFFICIAL	ACTION COMPLETION DATE
<p>It is recommend that the CIPO Contracting and Procurement Unit ensure that the contract files relating to Requests for Proposals contain, as a minimum, the following information: Purchase Requisition, Contract Request Summary, Request for Proposal, MERX documentation if open or electronic bidding, list of firms who responded, summary of the technical evaluation (if applicable), copy of regret letters to unsuccessful bidders, a list of any firms requesting debriefing, signed copy of contract, and any amendments / support for such amendments and required information on any special situation or condition pertaining to the overall contracting process which may not be in accordance with the GCRs.</p>	<p>CIPO agrees with this recommendation.</p> <p>CIPO Contracting and Procurement Unit has already added all the recommended information to the files. In addition to this recommendation, CPU has added a required documentation check list.</p>	<p>Senior Contracts and Procurement Advisor</p>	<p>January 1, 2006</p>

Approved:

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