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COMPETITION BUREAU AUDIT OF CONTRACTING ACTIVITIES

Final Report

Audit and Evaluation Branch

May 2003

Canada

COMPETITION BUREAU
AUDIT OF CONTRACTING ACTIVITIES
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EXECUTIVE SUMMARY

Background

Following the contracting framework initiated by the Comptroller's Branch in the year 2000, the Audit and Evaluation Branch was committed to perform a contracting audit annually on two branches of Industry Canada. This audit has focused on the contracting activities of the Competition Bureau.

Objective of the Audit

The objectives of the audit were to examine the contracting policies applied in the Competition Bureau to ensure that:

- The contracting principles of best value and open access are followed;
- Government Contract Regulations, Treasury Board Secretariat Contracting Policy, Treasury Board Contracting Directives, and Industry Canada's own policies and procedures are complied with;
- The contracting process is fair and transparent; and
- Operational requirements and development needs are met.

Scope and Methodology

The period under review included contracts with start dates between April 1, 2001 and March 13, 2003. Five different types of contracts were examined including: call-ups against standing offers, service contracts, travel letters, contracts for temporary help, and purchase orders.

The focus of the audit was directed towards service contracts. Service contracts accounted for 38.5% of the total number of contracts signed during the audit period representing 51.1% of the total contract dollar value.

Audit procedures included: an analysis of the overall list of files for possible contract splitting and/or repeat contracting; an examination of contract files selected for audit; and discussions with the Competition Bureau personnel to further confirm contracting practices.

The audit was conducted during the months of March and April 2003.

Conclusion

For the most part contracting policies applied in the Competition Bureau are in compliance with Government Contract Regulations, Treasury Board Secretariat Contracting Policy and Directives, and Industry Canada Contracting Policies. Efforts are made by the different branches in the Competition Bureau to award contracts in relation to best value, open access, fairness, and transparency. Furthermore, operating requirements and development needs are met.

There are a number of additional findings and recommendations resulting from this audit that are included in Section 4 of this report that highlight specific areas for improvement.

1.1BACKGROUND

Following the contracting framework initiated by the Comptroller's Branch in the year 2000, the Audit and Evaluation Branch was committed to perform a contracting audit annually on two branches of Industry Canada.

The audit focused on the contracting activities of the Competition Bureau (the Bureau). The Bureau maintains and encourages fair competition in Canada by the administration and application of:

- The Competition Act;
- The Consumer Packaging and Labelling Act;
- The Textile Labelling Act; and
- The Precious Metals Marketing Act.

The Commissioner of the Competition Bureau ensures compliance by the business community with the legislation administered by the Bureau and oversees the development of the policy and the dissemination of information aimed at ensuring optimum compliance levels.

1.2OBJECTIVES OF THE AUDIT

The objectives of the audit were to examine the contracting policies applied in the Competition Bureau to ensure that:

- The contracting principles of best value and open access are followed;
- Government Contract Regulations, Treasury Board Secretariat Contracting Policy, Treasury Board Contracting Directives, and Industry Canada policies and procedures are complied with;
- The contracting process is fair and transparent; and
- Operational requirements and development needs are met.

1.3 SCOPE AND METHODOLOGY

The audit focused on the contracting process currently in place in the Competition Bureau.

The period under review included contracts with start dates between April 1, 2001 and March 13, 2003. Five different types of contracts were examined including: call-ups against standing offers, service contracts, travel letters, contracts for temporary help, and purchase orders.

The following table outlines the total number and dollar value of contract files by contract type that fit the above-mentioned criteria and the number and dollar value of contracts that were selected for audit.

TYPE	Total Files		Files Examined	
	April-01 to March 13-03 Number	Value \$	Number	Value \$
Call-ups against standing offers	62	\$867,578	19	\$642,151
Purchase orders	242	444,258	8	99,061
Service contracts	258	1,820,354	46	1,122,863
Temporary help	73	378,133	8	140,437
Travel	35	52,134	4	21,068
TOTAL	670	\$ 3,562,457	85	\$ 2,025,580

During the audit period the Bureau signed a total of 670 contracts with a total dollar value of \$ 3,562,457. A total of 85 contracts (12.7 % of the total number) having a dollar value of \$ 2,025,580 (57 % of the total value) were selected for audit. The average dollar value of contracts signed was \$ 5,317 and the average dollar value of contracts selected for audit was \$ 23,830.

The focus of the audit was directed towards service contracts. Service contracts accounted for 38.5 % of the total contracts signed during the audit period representing 51.1 % of the contract dollar value. A total of 46 service contracts (54.1%) of the sample selected with a dollar value of \$ 1,123,863 (or 55.5 %) of the sample were examined.

The sample was determined based on setting a pre-determined average materiality level over the 23-month audit period. This level was set at \$ 15,210 for 2002 and \$ 12,601 for 2003. All contracts over these pre-determined amounts were selected for audit and a number below this level were also randomly selected.

During the initial planning process for the audit, audit criteria were developed in support of the audit objectives. The objectives and criteria were based on Treasury Board Secretariat Contracting Policy and Contracting Directives, Government Contract Regulations and Industry Canada Policies and Procedures in Contracts Review-Programs Services Board.

The audit sample of 85 contract files was selected during the planning phase.

The audit procedures carried out during the fieldwork phase included:

- An analysis of the overall list of files for possible contract splitting and/or repeated contracting;
- An examination of the contract files selected for audit. The contracts were examined in light of certain controls and questions that had been previously identified as a result of the audit objectives determined; and
- Discussions held with Competition Bureau personnel to further confirm contracting practices.

The audit was conducted during the months of March and April 2003.

1.4AUDIT FINDINGS AND RECOMMENDATIONS

Audit procedures were developed to test five aspects of the contracting process:

- Defining the requirement for contracting;
- Contract sourcing;
- Tendering;
- File documentation; and
- Closing the contract.

Detailed audit findings and recommendations are presented under these five categories in the sub-sections on the following pages.

Defining the Requirement

Findings

It was not evident from the documentation on file that an analysis was performed in all cases that clearly established the contracting alternative as the best means of meeting the defined need. However, based on discussions with personnel from the various branches of the Bureau, it was determined that processes and procedures are in place in support of the objective. A Statement of Requirements (SOR) was not prepared in several cases to clearly define the deliverables, timelines, service and cost expectations.

Recommendations

- A short note should always be prepared and included in the contract file that would clearly describe the steps undertaken in arriving at the contracting alternative as the best means of meeting the defined need. A list of items and alternatives considered in arriving at the decision would demonstrate how best value was achieved.
- A Statement of Requirements should always be prepared to define the deliverables, timelines, service and expectations. In certain cases, due to the nature of the services provided and /or the supplier, the decision-maker might feel that the requirements are obvious. Nonetheless, this should be supported in writing in the contract file.

Contract Sourcing

Findings

It was not clear from the files reviewed that source lists are being used to identify qualified individuals or firms. According to Treasury Board guidelines and procedures source lists should be designed to ensure that qualified individuals and firms are not omitted from consideration and that there is a fair opportunity for those qualified to obtain a share of the work.

Following discussions with Bureau personnel from the various branches it was confirmed that in certain cases source lists are distributed to the branches or are maintained by them. In one branch source lists are not used since only specific suppliers can meet specific needs that exist. Also, in many cases, the nature of the work under contract requires a certain level of expertise. This expertise is built up over time with various contractors.

In several instances there was no adequate justification on file for the use of sole sourcing.

The sole sourcing of contracts in excess of \$ 25,000 was not approved as required by Contract Review- Program Services Board (CR PSB) in several cases examined during this audit.

Recommendations

- The process for reviewing source lists or determining the source from which a contractor is selected should be documented in the contract file to demonstrate that alternatives were reviewed. This could form part of the note referred to in the previous sub-section (“ *Defining the Requirement.*”)
- The justification for sole sourcing should always be adequately documented in contract files.
- The branches should ensure that contracts in excess of \$ 25,000 are always submitted for approval to CR PSB as required and that all personnel involved understand what is included in this requirement.

Tendering

Findings

In one instance a contract in excess of \$ 25,000 was signed without obtaining other bids, with no justification for the sole sourcing of the contract and prior to the requirement to submit the contract for approval to CR PSB. It appears that the problem was created as a result of the contract covering a period three years. The person responsible for creating the contract thought, at the time, that the \$ 25,000 limit applied to annual disbursement levels. In fact, this particular contract was under \$ 25,000 on an annual basis.

Recommendation

- The Bureau should ensure that all personnel involved in the contracting process are aware of the various contract regulations, directives and thresholds that require different approval processes.

File Documentation

Findings

Decisions taken throughout the contracting process were not always documented.

In many cases the justification for a contract amendment was not substantiated. Most of these amendments were for the extension of the contract period. In certain cases, the amendment was not found in the contract file, or the contractor did not sign the amendment.

During the 2002 fiscal year there were several contracts for which certain contract information was erroneously posted to the Information and Management System (IFMS). This situation was greatly improved for the contracts signed in the 2003 fiscal year.

Recommendations

- Documentation of decisions taken throughout the contracting process should be retained on file (e.g., relevant discussions with the suppliers and responses thereto). Documentation could take the form of short notes and e-mails.

- The reasons for contract amendments should always be substantiated in writing in contract files. The signed amendments should be retained with original contracts as they form an integral part of signed contracts.
- A procedure should be put in place to ensure that all applicable contract information is properly recorded in IFMS.

Closing

Findings

The review of the contractor's performance was not documented in many contracts where this was required.

Recommendation

- A written evaluation of the contractor's performance should always be prepared and placed in the contract file following completion of each contract.

1.5 CONCLUSION

For the most part, contracting policies applied in the Competition Bureau are in compliance with Government Contracting Regulations, Treasury Board Secretariat Contracting Policy and Directives and Industry Canada Contracting Policies. Efforts are made by the different branches in the Competition Bureau to award contracts in relation to the best value, open access, fairness, and transparency. Furthermore, operational requirements and development needs are met.

ANNEXE A

**Response and Action Plan for
the Audit of Contracting Activities
of the Competition Bureau
May 2003**

Summary

Management has reviewed the audit report and accepts its findings and recommendations. Action has been taken on all the recommendations made and new procedures are in place to rectify the identified weaknesses. These procedures will be monitored to ensure compliance and will be re-evaluated in six months time.

Action Plan for the implementation of the report's recommendations

Section 1: Defining the Requirement

Staff have been instructed to ensure that appropriate documentation is on the file that will detail: the steps taken in determining the need for contracting, including a brief identification of how best value will be achieved; the contractor selection process, including any source lists accessed and alternative contractors considered; a well defined set of deliverables, time lines, services and expectations.

Section 2: Contract Sourcing

Source lists are being used wherever possible and the lists used will now be identified on the file. Justification for sole sourcing will also be included on the file, in accordance with the regulations and the recommendations. All contracts in excess of \$25K (other than call-ups on standing offers) will be processed through the CR PSB.

Section 3: Tendering

All staff with contracting or purchasing responsibilities, regardless of whether their files were the cause for any of these recommendations, will be tasked with refreshing their knowledge of the procedures, limits and authorities by participating in a departmental contracting session when it becomes available. The Bureau Training Coordinator is in the process of assessing whether the department could offer a refresher course for the CB staff.

Section 4: File Documentation

The financial administrative files will be more complete and will contain the information respecting records of decision, references to discussions with suppliers and amendments. Also, staff working with IFMS are now more familiar with the system and are receiving appropriate training on the system.

Section 5: Closing

New follow up procedures for closed contract files have been implemented to ensure contract evaluations are obtained from the case managers. The Temporary Help Contract Administrator now ensures that there is an evaluation placed on each temporary help file; as do the Purchasing officers.

Conclusion

The Bureau administrators view this audit as a positive step in defining and reviewing the purchasing and contracting processes and will ensure compliance with the recommendations. The Bureau will monitor these activities and will conduct a follow up internal review in six months time.