



2001-610 Final Report - Internet Version

**Compliance Audit of Construction and A&ES Contracting -
Atlantic Region**

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Public Works and
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Audit and Review

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Table of Contents

Executive Summary	1
1 Introduction	5
1.1 Authority for the Project	5
1.2 Objective	5
1.3 Scope and Methodology	5
1.4 Background	6
2 Issues Examined	8
3 Findings, Conclusions and Recommendations	9
3.1 Review of Construction and A&ES Contract Files	9
4 Audit Criteria	13

Executive Summary

Authority for the Project

This audit was included in the FY 2001/2002 Audit and Review Plan approved by PWGSC's Audit and Review Committee (ARC).

Objective

To determine the extent to which construction and architectural & engineering services (A&ES) contracting practices within Atlantic Region comply with key regulations, legislation, trade agreements, policies/guidelines, and approved practices.

Scope

The scope of the audit included contracting practices employed from the time contracting personnel were made aware of a construction or A&ES requirement through a requisition or other means, until the time the project was completed and the contract file closed. A compliance methodology was applied to contracts for construction and A&ES contracting. Both competitive and non-competitive requirements were included in the scope. The audit reviewed only those contracts in which contracting personnel in the Supply and Services Directorate, Atlantic Region were involved.

The audit reviewed a statistical sample of construction contracts from fiscal year 1999/2000. The total population of A&ES contracts related to construction was reviewed for fiscal year 2000/2001, as well as two contracts from fiscal year 1999/2000.

The following types of contracts were not included in the scope: leases, contracts involving Defence Construction Canada, contracts issued without RPS involvement for other government departments, and A&ES contracts not related to construction.

Background

Periodic audits of construction and A&ES contracting

The objective of government contracting is to acquire goods and services, and to carry out construction, in a manner that enhances access, competition and fairness, and results in best value or, if appropriate, the optimal balance of overall benefits to the government and the Canadian people. Government policies, guidelines and processes have been designed to achieve this objective in a cost-effective manner.

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

Audit and Review Branch (ARB) conducted a review of construction contracting practices in 1999/2000 within the National Capital Area (NCA). Subsequently, ARC approved similar audits to be undertaken on a rotational basis in the regions. Beginning last year, A&ES contracting was added to the scope. Atlantic Region was selected as the auditee for the current audit based on an analysis of regional contracting business volumes.

Changes to delegated authorities

On July 17, 1998, the Delegation of Authorities instrument relating to construction and A&ES contracting was amended so that Real Property Services Branch (RPSB) staff may approve contract changes up to a cumulative aggregate of \$25K for competitive and \$10K for non-competitive contracts. These approval amounts apply to contract amendments issued by RPSB as well as contracts issued by Supply Operations Service Branch (SOSB) on behalf of RPSB. Amendments exceeding these cumulative amounts would be subject to approval levels within the regional Real Property Contracting (RPC) unit/SOSB, or higher, as per the limits outlined in the delegation instrument.

In an effort to maintain an efficient approval process, SOSB and RPSB jointly developed an implementation paper in February 1999 which allows for pre-approved amounts for anticipated amendments (PAAA). Recognizing that in many cases construction contract change orders (amendments) can be somewhat predictable, the procedure allows RPSB to seek approval, through the contracting officer at the time of contract approval, for an amount which estimates the value of anticipated change orders.¹ The PAAA estimate is based on a detailed risk analysis which breaks anticipated changes down into three categories: unscheduled work, work arisings, and design changes.

The above mentioned changes have created two approval scenarios:

1. Change orders which do not fall within the PAAA are subject to the normal authorities outlined in the Delegation of Authorities Instrument.
2. Change orders falling within one of the three PAAA categories are subject to the same RPSB approval authorities. However, PAAA amendments which exceed RPSB approval levels can be approved by RPC/SOSB personnel using the appropriate *non-competitive* contract entry approval authority, not to exceed the lower of the Director level or the original approval Authority.²

¹ It is important to note that it is only the estimated dollar amount which is being approved, not the advance approval to issue amendments.

² Policy Notification 35 dated July 17, 1998, Section 2.

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

While approval of the PAAA does not amount to *pre-approval* of future change orders, it does allow for a more streamlined approval process should future change orders fall within the pre-defined categories.

Key Findings

The audit team found that, for both construction and A&ES contracts, requisitioning, sourcing, bid solicitation, and bid evaluation processes (where applicable) were conducted in accordance with key regulations, legislation, trade agreements, policies/guidelines and approved practices. Administration of change orders (amendments) and payments were similarly compliant.

All construction contracts were found to be approved at the appropriate level, and that such approvals were based on sufficient and accurate information.

For A&ES contract approvals, the audit team determined the following.

1) Generally, contracts greater than \$50K were approved at the appropriate approval level, and such approvals were based on sufficient and accurate information for the approval authority to make an informed decision.

2) Those below \$50K, which were sourced using the SPEC system and issued by the contracting officer, were found to require more comprehensive file documentation in order to fully demonstrate that the appropriate approval level was sought and obtained. The audit team advised management and staff of this requirement during the audit. Action has been taken by Atlantic Region towards ensuring that sufficient file documentation is maintained for these and other contracting situations.

It was also noted that two A&ES contracts reviewed involved former public servants in receipt of a pension. Both contracts were non-competitive situations of low dollar value (below \$50K but greater than \$25K) [*]

[*] Financial records indicated that the individuals in question received other contracts in previous fiscal years.

Interviews with regional staff indicated that a lack of awareness of this policy requirement was potentially a cause of the non-compliance. However, since contracts with former public servants in receipt of a pension are not readily identifiable using the information systems currently in place, data limitations exist which prevent further audit analysis of this issue.

The two noted cases of non-compliance, coupled with the follow-up interviews and financial analysis noted above, preclude the audit team from providing management with an opinion regarding the extent of non-compliance to the contracting policies relating to former public servants in receipt of a pension.

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

With respect to change orders, it was found that approvals were in compliance with delegated authorities for both A&ES and construction contracts.

Conclusion

Statistical samples of sufficient size were selected, allowing the audit team to conclude with a high degree of reliability on the entire population of construction and A&ES contracts with respect to criteria based on key government contracting regulations, legislation, trade agreements, policies/guidelines and approved practices.

Because the instances of non-compliance were within tolerable error rates, the audit team concludes that construction and A&ES contracting practices in Atlantic Region complied with the audit criteria. This conclusion applies to construction contracts issued in fiscal year 1999/2000 and A&ES contracts related to construction issued in 2000/2001.

Notwithstanding the above, the audit team expresses a reservation with respect to the appropriate approval for low dollar value A&ES contracts with former public servants in receipt of a pension. While in the opinion of the audit team this is an issue requiring immediate management attention, it cannot provide an opinion on the level of compliance to applicable contracting policies due to insufficient evidence available.

Recommendations

It is recommended that:

1. (a) *the Regional Director General, Atlantic Region take measures to ensure that Regional Contracting staff comply with the policy requirements for contracting with former public servants in receipt of a pension and that Regional Real Property Services project managers are aware of the requirements;*
1. (b) *the Assistant Deputy Minister, SOSB, take measures to ensure that contracting staff in other Regions, and headquarters, are reminded of these policy requirements;*
2. *the Assistant Deputy Minister, SOSB ensure that an approach to monitoring contracts with former public servants in receipt of a pension for compliance to policy is developed and implemented. While the issue was identified in Atlantic Region, such a monitoring approach would be beneficial nationally.*

1 Introduction

1.1 Authority for the Project

This audit was included in the 2001/02 Audit and Review Plan approved by the Audit and Review Committee (ARC).

1.2 Objective

To determine the extent to which construction and architectural & engineering services (A&ES) contracting practices within Atlantic Region comply with key regulations, legislation, trade agreements, policies/guidelines and approved practices.

1.3 Scope and Methodology

The scope of the audit included contracting practices employed from the time contracting personnel were made aware of a construction or A&ES requirement through a requisition or other means, until the time the project was completed and the contract file closed. A compliance methodology was applied to contracts for construction and A&ES contracting. Both competitive and non-competitive requirements were included in the scope. The audit reviewed only those contracts in which contracting personnel in the Supply and Services Directorate, Atlantic Region were involved.

Atlantic Region was selected as the auditee for the current audit based on an analysis of national contracting business volumes for the years 1999/2000 and 2000/2001. This audit was carried out in three phases: i) planning, ii) detailed examination; and iii) reporting .

The detailed examination phase was conducted between June 18 and 28, 2001. Site visits were made to three regional offices in Atlantic Region: Saint John, New Brunswick; Halifax, Nova Scotia; and St. John's, Newfoundland. This phase consisted of two components.

First, a series of interviews was conducted with management and staff in order to familiarize the audit team with contracting related controls.

Second, detailed contract file reviews were conducted for construction and A&ES contracting, in order to assess the extent to which controls were operating as intended to achieve compliance to key regulations, legislation, trade agreements, policies/guidelines and approved practices. For each transaction, both the contracting and real property project management files were reviewed. Details concerning each sample are presented below.

- Construction: A statistical sampling approach was utilized for construction contracts awarded in fiscal year 1999/2000, based on a confidence level of 90%, a sample precision of +/- 5% and an estimated error rate of 15% . Based on these parameters and a construction

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

population of less than 200, a minimum sample size of 30 was required. The audit team reviewed 36 construction contracts, whose original contract values totalled approximately \$22 million (excluding applicable taxes).

- A&ES: Given the relatively small population of A&ES contracts related to construction awarded per year in Atlantic Region, all 29 contracts for fiscal year 2000/2001 were reviewed and an additional two contracts were reviewed from fiscal year 1999/2000. The original dollar values of A&ES contracts reviewed totalled approximately \$3 million (excluding applicable taxes).

The following types of contracts were not included in the scope: leases, contracts involving Defence Construction Canada, contracts issued without RPS involvement for other government departments, and A&ES contracts not related to construction.

Background

Periodic audits of construction and A&ES contracting

The objective of government contracting is to acquire goods and services, and to carry out construction, in a manner that enhances access, competition and fairness, and results in best value or, if appropriate, the optimal balance of overall benefits to the government and the Canadian people. Government policies, guidelines and processes have been designed to achieve this objective in a cost-effective manner.

Audit and Review Branch (ARB) conducted an audit of construction contracting practices in 1999/2000 within the National Capital Area (NCA). Subsequently, ARC approved similar audits to be undertaken on a rotational basis in the regions. Beginning last fiscal year, A&ES contracting was added to the scope and an audit was conducted in Western Region. Atlantic Region was selected as the auditee for the current audit based on an analysis of regional contracting business volumes.

Changes to delegated authorities

On July 17, 1998, the Delegation of Authorities instrument relating to construction and A&ES contracting was amended so that Real Property Services Branch (RPSB) staff may approve contract changes up to a cumulative aggregate of \$25K for competitive and \$10K for non-competitive contracts. These approval amounts apply to contract amendments issued by RPSB as well as contracts issued by Supply Operations Service Branch (SOSB) on behalf of RPSB. Amendments exceeding these cumulative amounts would be subject to approval levels within the regional Real Property Contracting (RPC) unit/SOSB, or higher, as per the limits outlined in the delegation instrument.

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

In an effort to maintain an efficient approval process, SOSB and RPSB jointly developed an implementation paper in February 1999 which allows for pre-approved amounts for anticipated amendments (PAAA). The procedure allows RPSB to seek approval, through the contracting officer at the time of contract approval, for an amount which estimates the value of anticipated change orders.³ The PAAA estimate is based on a detailed risk analysis which breaks anticipated changes down into three categories: unscheduled work, work arisings, and design changes.

The above mentioned changes have created two approval scenarios:

1. Change orders which do not fall within the PAAA are subject to the normal authorities outlined in the Delegation of Authorities Instrument.

2. Change orders falling within one of the three PAAA categories are subject to the same RPSB approval authorities. However, PAAA amendments which exceed RPSB approval levels can be approved by RPC/SOSB personnel using the appropriate *non-competitive* contract entry approval authority, not to exceed the lower of the Director level or the original approval Authority.⁴

While approval of the PAAA does not amount to *pre-approval* of future change orders, it does allow for a more streamlined approval process when future change orders fall within the pre-defined categories.

³ It is important to note that it is only the estimated dollar amount which is being approved, not the advance approval to issue amendments.

⁴ Policy Notification 35 dated July 17, 1998, Section 2.

2 Issues Examined

For each construction and A&ES contract reviewed, the audit examined contracting practices relating to the entire procurement process. The audit criteria used for contract file reviews were based on the extent to which the various phases of the contracting process, from requisition to contract administration, were conducted appropriately and in compliance with government policy, trade agreements, and applicable legislation. These criteria, which are presented in Section 4 of this report, relate to several areas of significance, namely: requisitioning, sourcing, bid solicitation, bid evaluation, change order (amendment) and payment processes, and use of delegated contracting authorities.

The audit findings are presented in the following section according to the above-mentioned categories.

3 Findings, Conclusions and Recommendations

3.1 Review of Construction and A&ES Contract Files

A detailed review of A&ES and construction contract and project management files was conducted by the audit team, which included follow-up interviews with relevant RPC officers and Real Property project managers. The audit findings are presented below, according to the major lines of enquiry examined in the audit.

3.1.1 Requisitioning

The audit team found that, for virtually all contracts, there was a properly completed, authorized and funded requisition (or equivalent) on file certifying that funds were available.

3.1.2 Sourcing

The audit team found that sourcing for both construction and A&ES contracts was conducted in accordance with key regulations, legislation, trade agreements, policies/guidelines and approved practices.

Use of the Government Electronic Tendering Service - GETS (for electronic bidding requirements), SPEC (for A&ES contracts), and ACCORD (for construction contracts) was found to be appropriate.

3.1.3 Bid Solicitation

The bid solicitation processes for both construction and A&ES contracts were found to be in accordance with key regulations, legislation, trade agreements, policies/guidelines and approved practices.

3.1.4 Bid Evaluation

For A&ES contracts which involved an evaluation of proposals, the evaluation process was found to be in accordance with key regulations, legislation, trade agreements, policies/guidelines and approved practices. While Real Property personnel conducted the technical evaluations of proposals, contracting officers were generally involved at the initial and latter stages to ensure a fair and transparent evaluation was done. This involvement normally culminated with the development of an evaluation report by the contracting officer, signed by all committee members.

3.1.5 Change order (amendment) and payment processes

The processes for administering change orders and payments were generally found to be adequately applied and in accordance with key regulations, legislation, trade agreements, policies/guidelines and approved practices. It was noted that contracting officer involvement has increasingly included the review of cost support for contemplated change orders.

3.1.6 Use of delegated contracting authorities

3.1.6.1 Construction Contracts

It was found that all construction contracts were approved at the appropriate level, and that such approvals were based on sufficient and accurate information for the approval authority to make an informed decision.

3.1.6.2 A&ES Contracts

For A&ES contracts, the audit team determined the following.

1) Generally, contracts greater than \$50K were approved at the appropriate approval level. Such approvals were based on sufficient and accurate information for the approval authority to make an informed decision.

2) Those below \$50K, which were sourced using the SPEC system and issued by the contracting officer, were found to require more comprehensive file documentation in order to fully demonstrate that the appropriate approval level was sought and obtained. The audit team advised management and staff of this requirement during the audit. Action has been taken by Atlantic Region towards ensuring that sufficient file documentation is maintained for these and other contracting situations.

It was also noted that two A&ES contracts reviewed involved former public servants in receipt of a pension. Both contracts were non-competitive situations of low dollar value (below \$50K but greater than \$25K) [*]

[*] Financial records indicated that the individuals in question received other contracts in previous fiscal years.

Follow-up interviews with regional staff indicated that a lack of awareness of this policy requirement was potentially a cause of the non-compliance. However, since contracts with former public servants in receipt of a pension are not readily identifiable using the information systems currently in place, data limitations exist

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

which prevent further audit analysis of this issue and inhibits proper oversight by management.

The two noted cases of non-compliance, coupled with the follow-up interviews and financial analysis noted above, preclude the audit team from providing management with an opinion regarding the extent of non-compliance to the contracting policies relating to former public servants in receipt of a pension.

3.1.6.3 Change Orders

In the vast majority of cases, approval of A&ES and construction change orders was in compliance with delegated authorities.

Conclusion

Statistical samples of sufficient size were selected, allowing the audit team to conclude with a high degree of reliability on the entire population of construction and A&ES contracts with respect to criteria based on key government contracting regulations, legislation, trade agreements, policies/guidelines and approved practices.

Because the instances of non-compliance were within tolerable error rates, the audit team concludes that construction and A&ES contracting practices in Atlantic Region complied with the audit criteria. This conclusion applies to construction contracts issued in fiscal year 1999/2000 and A&ES contracts related to construction issued in 2000/2001.

Notwithstanding the above, the audit team expresses a reservation with respect to the appropriate approval for low dollar value A&ES contracts with former public servants in receipt of a pension. While in the opinion of the audit team this is an issue requiring immediate management attention, it cannot provide an opinion on the level of compliance to applicable contracting policies due to insufficient evidence available.

Recommendation

It is recommended that:

1. (a) *the Regional Director General, Atlantic Region take measures to ensure that Regional Contracting staff comply with the policy requirements for contracting with former public servants in receipt of a pension and that Regional Real Property Services project managers are aware of the requirements;*
1. (b) *the Assistant Deputy Minister, SOSB, take measures to ensure that contracting staff in other Regions, and headquarters, are reminded of these policy requirements;*
2. *the Assistant Deputy Minister, SOSB ensure that an approach to monitoring contracts with former public servants in receipt of a pension for compliance to policy is developed and implemented. While the issue was identified in Atlantic Region, such a monitoring approach would be beneficial nationally.*

4 Audit Criteria

The following criteria were used to assess contracting practices during the audit.

Requisition

- A properly completed, authorized and funded requisition (or equivalent document) was on file.

Sourcing

- Sourcing of procurements was in accordance with Treasury Board policy, the Supply Manual and GCRs.⁵

Bid solicitation

- The bid solicitation process was in accordance with the Supply Manual, GCRs and the Official Languages Act.
- The bid solicitation document was clear and comprehensive.
- Changes to, or cancellation/reissuance of, a bid solicitation was in accordance with the Supply Manual and applicable trade agreements.
- Principles of fairness were applied in communicating with potential bidders.

Bid evaluation

- Evaluation of mandatory and rated criteria were in accordance with the RFP and the Supply Manual.
- Modifications of bids were in accordance with the Supply Manual.
- Evaluation of proposals was handled appropriately, in accordance with the RFP and with the Supply Manual.
- Negotiations were conducted in accordance with the Supply Manual.
- Principles of fairness were applied with respect to consideration of bids.

The change order (amendment) and payment process

- Cash allowances were properly justified as per departmental policy.
- Appropriate administration of performance and payments was performed during the contract.
- Appropriate action relating to bid/contract security was taken (construction contracts only).

⁵ Note that the Supply Manual incorporates the requirements of Treasury Board Contracting Policy.

**2001-610 Compliance Audit of Construction and A&ES Contracting - Atlantic Region
Final Report**

Use of delegated contracting authorities

- Contract Planning & Award Approval (CPAA) or Procurement Plan was used to obtain contract approval.
- Contract Award was in accordance with approval granted.
- Specialists (legal, cost analysts, quality assurance) were consulted in accordance with Supply Manual.
- Amendments were approved using the appropriate approval authority level and appropriately monitored.
- Contractual documents were signed by the contractor.

2000-643 Regional Audit of Construction and A&ES Contracting - Western Region
Final Report
