



1998-643 Final Report

**Audit of Contracting For Military Aircraft
Repair and Overhaul Services and
Equipment**

ARC Meeting: 1999-12-03



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Executive Summary

Authority for the Project

This audit was approved by the Audit and Review Committee (ARC) for inclusion in the 1998/99 Audit and Review Plan.

Objective

To determine the extent to which contracting for military aircraft repair and overhaul (R&O) services and equipment is conducted in compliance with applicable legislation, trade agreements, and government contracting policies.

Scope

The Detailed Examination Phase consisted of an in-depth review of 25 directed single source military aircraft repair and overhaul (R&O) contracts awarded since fiscal year 1993/94 by PWGSC on behalf of DND. All phases of the procurement process were included in the scope of each contract reviewed, with a focus on two major areas: the appropriate use of sole sourcing and the extent to which procurement practices and controls ensured fair value to the Crown.

Background

Broadly defined, Repair and Overhaul (R&O) refers to the repair of an item of equipment to return it to serviceable condition and/or the replacement of both worn and damaged parts or parts for which service life has expired.¹ Supply Operations Service Branch (SOSB) conducts R&O contracting on behalf of several government departments. Military R&O contracting for the Department of National Defence (DND), SOSB's largest client, constitutes the bulk of R&O contracting activity undertaken by the Branch.

Military aircraft R&O contracting conducted by SOSB on behalf of DND includes the provision of spares support; Depot Level Inspection and Repair (DLIR); R&O of specific components; software maintenance; Technical Investigations and Engineering Services (TIES); document support; structural life monitoring programs; and configuration management.² In 1997/98, Supply Operations Service Branch (SOSB) issued approximately \$ 230 million worth of contracts relating to military aircraft repair and overhaul (R&O). The significant business volume associated with this function was a major factor in the inclusion of this review in the Audit and Review Plan.

¹ Supply Manual - Supply Operations Service Branch

² Instruction Covering DND Repair and Overhaul Acquisition Review Process, March 21, 1997.

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Adequate sole source justification, coupled with sufficient review/challenge by PWGSC, is considered critical to ensuring compliance with statutory and policy requirements and to withstanding supplier challenges through the Canadian International Trade Tribunal (CITT). To the extent that a relatively high proportion of military aircraft R&O contracts are sole sourced, the audit focused on the process used to justify the decision to sole source, as well as on the pre-contract award notification process. In that regard, compliance with two key policy requirements - the Agreement on Internal Trade (AIT) and the Advance Contract Award Notice (ACAN) policy - was examined.

In terms of the rationale for sole sourcing, the audit sought to determine the extent of compliance with the requirements of the AIT, which prescribes specific conditions under which procurement procedures other than Open Tendering are permitted.³ It is worth noting that the need to link sole source justifications with the requirements of the trade agreements was underscored in a recent Treasury Board Policy Notification.⁴ With regard to the ACAN policy⁵, the audit examined the extent of support for the sole source rationale. In addition, the audit sought to confirm that appropriate sole source conditions existed prior to notifying industry of the department's intent to award a sole source contract.

Key Findings

Major findings are presented by audit issue examined.

Completeness and relevance of the information used to make sole sourcing decisions

For the majority of contracts reviewed, sole source justifications were based on either the existence of intellectual property rights (IPRs) or licence agreements. In order to invoke the "exclusive rights" provision of the AIT, the audit team expected the contracting authority to verify that the rights or agreements in question were exclusive in nature. In such cases, the audit team found that:

- key documentation supporting the existence and continued validity of exclusive IPRs and licence agreements was not found on the procurement files and was not readily available to AMES staff. While the audit team acknowledges the difficulty in obtaining company proprietary information, the procurement files were expected to contain, at minimum, a letter from the Original Equipment Manufacturer (OEM) certifying that an exclusive licence agreement was in place with the contractor in question. As per government policy, issuance of an ACAN is only appropriate where there is documented support for sole sourcing.

³ Agreement on Internal Trade, Chapter 5, Article 506.12(a) permits Limited Tendering for reasons related to exclusive rights

⁴ TB Contracting Policy Notice 1993-3 (March 4, 1999), Paragraph 7 states "The reason for limited tendering must be justified in accordance with the wording of the applicable trade agreement."

⁵ Supply Manual, 98-3, Section 8.009

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Note: AMES management has obtained an opinion from PWGSC Legal Services relating to the use of the "exclusive rights" provision of the AIT. Specifically, Legal Services has advised that there is risk in supporting the exclusive rights provision with a non-exclusive licence. If, however, a company holds the only non-exclusive licence in Canada, Legal has advised that another sole source provision for "the maintenance of specialized products that must be maintained by the manufacturer or its representative" is clearly applicable.

ARB is supportive of exploring more appropriate sole source provisions allowed for under the AIT. In all cases, however, the use of any sole source provision must be fully substantiated and documented on the procurement file.

- For a significant number of cases, the sole source justifications contained in approval documents (i.e. CPAAs and ACRO submissions) were inconsistent with GCRs and/or AIT sole source criteria. As these documents are the means by which management makes informed decisions and are also relied upon by the CITT during its investigations, specific and appropriate references to the applicable Limited Tendering provisions are essential.⁶ AMES management has informed the audit team that such references have recently been included in CPAA documents and that staff will be reminded of this requirement. To ensure ACRO sole source justifications are also appropriate, increased contracting officer involvement in reviewing/challenging ACRO recommendations is necessary.

The extent of compliance to the sole sourcing provisions of the AIT and GCRs

- Due to the absence of key documentation noted above, the audit team could not, in most instances, make a determination as to whether a particular procurement was in compliance with the AIT sole sourcing provisions. However, in two cases where AMES was able to provide documentation for review by the audit team (a licence agreement and a certification from the Original Equipment Manufacturer), the analysis revealed that the arrangements were not exclusive, meaning that the incumbent contractors did not have exclusive rights to perform the work associated with those requirements.

Adequacy of time verification practices

- Time verifications are a key control in ensuring fair value when a requirement is sole sourced. While provision for time verification was included in most contracts reviewed, it was observed that such verifications were done infrequently.

⁶ In a recent CITT decision, the Tribunal concluded that the utilization of the National Security Exception must be documented on the file. In response, Policy Notification #38 incorporates the requirement that contracting officers must explain clearly in the Sourcing section of a Procurement Plan that the National Security exemption is being invoked, specifying each of the trade agreements from which the procurement is being excluded.

Conclusions

The audit team found that, with some exceptions, military aircraft R&O contracting is conducted in general compliance with contracting policies and other applicable legislation. In addition, most of the controls and practices in place to ensure that the Crown receives fair value were found to be adequate and effective in terms of achieving what they were intended to do.

There are, however, several major areas of concern, chief among these is the justification for sole sourcing. It is critical that any noncompetitive tendering procedure comply with the trade agreements and/or the Government Contracts Regulations. In that regard, the noted absence of documentary evidence to corroborate the existence and continued validity of Intellectual Property Rights or exclusive licence agreements leaves PWGSC vulnerable in the face of a CITT challenge. This risk is exacerbated by, in some cases, the apparent lack of challenge on the part of PWGSC contracting officers as to the validity of sole source justifications. There is also a risk that ACRO submissions to SPAC may not be providing SPAC members with complete information upon which to make an informed decision.

Sole source justifications must be clearly linked to the GCRs and, where applicable, the AIT.

When licence agreements and IPRs are used as sole source rationale and there is some question as to their exclusivity, it would be more appropriate to determine the applicability of other sole source provisions available under the AIT. In cases where no AIT sole source provisions can be fully supported, the competitive process should be used via a Notice of Proposed Procurement (NPP). The issuance of ACANs without fully supported sole source justifications increases risk to the Crown, particularly as public scrutiny of the procurement process intensifies. Indeed, external stakeholders, including the Auditor General and the Public Accounts Committee, are increasingly demanding such discipline.

Improvements are also required in the quality of the justifications for sole source provided in the CPAAs. It is clear, for example, that, with an approval for sole source from SPAC, contracting officers do not necessarily focus on ensuring the CPAA provides strong, precise sole source justifications. In some cases, the SPAC approval, coupled with the publication of an ACAN, is used for justification. The assertion by AMES management that recent CPAAs contain appropriately referenced sole source justifications, and that staff will be reminded to continue this practice, is recognized and seen positively by the audit team.

With respect to the other audit findings, the audit team has concluded that:

- more frequent time verification practices are warranted to provide assurance that contractors are accurately recording time;
- procedures relative to travel and living should be tightened to ensure there is a basis for determining the acceptability of such charges;
- ensuring accurate procurement information within Procurement Summaries is essential, so that management information is reliable and that the reporting requirements of the AIT are met;

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- task tracking and control on TIES and publications contracts requires improvement. The importance of providing adequate cost estimates and documenting progress is fundamental to demonstrating value and estimates should be obtained from suppliers with regular updates.
- the use of holdbacks on progress payments for TIES and DLIR contracts could improve, where feasible, the Crown's ability to hold contractors to their contractual obligations;
- incorporating dollar threshold limits for DND approval of task authorizations in contractual documents is warranted to help ensure DND does not exceed its delegated authority.

Recommendations

It is recommended that:

1. a) *for contracts anticipated for renewal, ILS Directorate ensure the sole source justifications used are in accordance with the provisions of the AIT and are supported on file by documentary evidence. ILS Directorate should review licence agreements and IPRs to determine their continued validity and whether they fulfil the relevant AIT limited tendering provision. Such reviews should be done well in advance of contract renewal to allow sufficient time to ensure that sole source justifications are in accordance with the requirements of the AIT and are fully documented;*
- b) *in concert with the above activity, contracting officers review future sole source justifications prior to ACRO consideration and actively perform a challenge function, to ensure that each sole source justification is in keeping with the AIT and/or GCRs. Evidence of such review should be on the procurement file;*
2. *ILS Directorate incorporate the following into contractual documents:*
 - a) *holdback provisions, where feasible, on DLIR and TIES contracts;*
 - b) *for cases involving a fixed time rate basis of payment, a clause requiring the contractor to provide a time submission upon completion of the contract;*
3. *ILS Directorate formalize with DND the dollar limit thresholds for approval of task authorizations;*
4. *ILS Directorate increase time verification efforts. Due to resource constraints, a sampling methodology could be used to address the current gap in this area;*
5. *ILS Directorate increase efforts in the area of coding contracts to ensure a higher level of accuracy. A possible solution could involve review of Procurement Summaries by Contract Quality Control (CQC) staff. Moreover, the ramifications of inaccurate coding should also be reinforced with contracting officers.*

1 Introduction

1.1 Authority for the Project

This audit was approved by the Audit and Review Committee (ARC) for inclusion in the 1998/99 Audit and Review Plan.

1.2 Objective

To determine the extent to which contracting for military aircraft repair and overhaul (R&O) services and equipment is conducted in compliance with applicable legislation, trade agreements, and government contracting policies.

1.3 Scope

The Detailed Examination Phase consisted of an in-depth review of 25 sole source military aircraft repair and overhaul (R&O) contracts awarded since fiscal year 1993/94 by the Integrated Logistics Services (ILS) Directorate of Aerospace, Marine and Electronics Systems Sector (AMES) on behalf of DND. All phases of the procurement process were included in the scope of the review, with a focus on two major areas: the appropriate use of sole sourcing and the extent to which procurement practices and controls ensured value for money to the Crown.

1.4 Background

Broadly defined, Repair and Overhaul (R&O) refers to the repair of an item of equipment to return it to serviceable condition and/or the replacement of both worn and damaged parts or parts for which service life has expired.⁷ Supply Operations Service Branch (SOSB) conducts R&O contracting on behalf of several government departments. Military R&O contracting for the Department of National Defence (DND), SOSB's largest client, constitutes the bulk of R&O contracting activity undertaken by the Branch.

Military aircraft R&O contracting conducted by SOSB on behalf of DND includes the provision of spares support; Depot Level Inspection and Repair (DLIR); R&O of specific components; software maintenance; Technical Investigations and Engineering Studies (TIES); document support; structural life monitoring programs; and configuration management.⁸ In 1997/98, Supply Operations Service Branch issued approximately \$ 230 million worth of contracts relating to military aircraft repair and overhaul. The significant business volume associated with this function was a major factor in the decision to include this review in the Audit and Review Plan.

⁷ Supply Manual - Supply Operations Service Branch

⁸ Instruction Covering DND Repair and Overhaul Acquisition Review Process

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Adequate sole source justification, coupled with sufficient review/challenge by PWGSC, is considered critical to ensuring compliance with statutory and policy requirements and to withstanding supplier challenges through the Canadian International Trade Tribunal (CITT). To the extent that a relatively high proportion of military aircraft R&O contracts are sole sourced, the audit focused on the process used to justify the decision to sole source, as well as on the pre-contract award notification process. In that regard, compliance with two key policy requirements - the Agreement on Internal Trade (AIT) and the Advance Contract Award Notice (ACAN) policy - was examined.

In terms of the rationale for sole sourcing, the audit sought to determine the extent of compliance with the requirements of the AIT, which prescribes specific conditions under which procurement procedures other than Open Tendering are permitted.⁹ It is worth noting that the need to link sole source justifications with the requirements of the trade agreements was underscored in a recent Treasury Board Policy Notification.¹⁰ With regard to the ACAN policy¹¹, the audit examined the extent of support for the sole source rationale. In addition, the audit sought to confirm that appropriate sole source conditions existed prior to notifying industry of the department's intent to award a sole source contract.

⁹ Agreement on Internal Trade, Chapter 5, Article 506.12(a) permits Limited Tendering for reasons related to exclusive rights

¹⁰ TB Contracting Policy Notice 1993-3 (March 4, 1999), Paragraph 7 states "The reason for limited tendering must be justified in accordance with the wording of the applicable trade agreement."

¹¹ Supply Manual, 98-3, Section 8.009

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2 Issues Examined

Based on the results of the Preliminary Survey Phase completed in March 1999, several issues were identified for detailed examination, relating to the appropriateness of sole source contracting as well as to the use of controls to secure fair value. They were:

1. the appropriateness of the information used to make sole sourcing decisions;
2. the extent of compliance to the sole sourcing provisions of the Agreement on Internal Trade (AIT) and Government Contracts Regulations (GCRs);
3. the adequacy of price support and appropriateness of profit calculations;
4. the adequacy of time verification practices;
5. the adequacy of progress payment claim review;
6. the accuracy of contract coding/information;
7. the appropriateness of Basis of Payment decisions.

The Preliminary Survey also identified certain types of military aircraft R&O contracts which should be reviewed during detailed examination, specifically contracts for TIES, DLIR, R&O of systems/components, publications management, and software development. As such, a sample of 25 contracts was selected at random within each category, broken down as follows:

TIES ¹²	7	\$18,123,374
R&O of Systems/Components	11	60,456,091
DLIR	3	41,963,617
Publications Management	3	8,270,468
Software Development	1	132,337
TOTAL	25	\$128,945,887

Each contract was reviewed in detail through examination of the associated contract files as well as follow-up interviews with contracting officers and managers. All phases of the procurement process were reviewed, with emphasis on the issues outlined above.

The audit findings are presented in the following section according to the above-mentioned issues. In addition, other observations made during the course of contract reviews which the audit team judged to be significant have also been included.

¹² One of these contracts was related to structural airframe testing and contained a TIES component. No task authorizations were issued under the TIES component. As a result, the number of TIES contracts for which task authorizations were reviewed by the audit team was 6.

3 Findings

The audit team found that, with some exceptions, military aircraft repair and overhaul contracting was conducted in general compliance with government contracting policies, trade agreements and applicable legislation. However, several major areas were noted as requiring improvement. Significant findings are presented below, by audit issue.

3.1 Appropriateness of information used to make sole sourcing decisions

3.1.1 The majority of contracts reviewed were sole sourced based on either of two rationales: ownership of Intellectual Property Rights (IPRs) by the incumbent contractor, or, the existence of an exclusive licence agreement between the Original Equipment Manufacturer (OEM) and the incumbent contractor. In order to invoke the "exclusive rights" provision of the AIT, the audit team expected the contracting authority to verify that the rights or agreements in question were exclusive in nature. In such cases, it was observed that there was no documentary evidence to demonstrate that contracting officers confirmed the continued existence/validity of IPRs and exclusive licence agreements prior to renewing R&O contracts on a sole source basis. Similarly, there was no evidence that contracting officers reviewed the sole source justifications contained in Advisory Committee on Repair and Overhaul (ACRO) submissions prior to consideration by the ACRO to ensure they were consistent with GCRs and the AIT. Such a challenge function is critical to ensuring that the ACRO considers appropriate and complete information when recommending procurement strategies for approval by the Senior Procurement Advisory Committee (SPAC).

3.1.2 Similarly, key documentation supporting the existence and continued validity of IPRs and exclusive licence agreements was not found on the procurement files, and was not readily available to AMES staff. It is recognized that in certain instances, it may not be possible to obtain copies of exclusive licence agreements between an OEM and a contractor, as the parties involved may not permit access to such information. At a minimum, however, the audit team expected to find correspondence from the OEM certifying that an exclusive licence agreement with the contractor in question was still in effect, or, if IPRs were involved, that documentation was on file supporting their existence. Instead, it appeared that Advance Contract Award Notices (ACANs) were being issued to confirm the sole source justifications put forward. While ACANs are essential to ensuring transparency in the award of sole source contracts, they do not, in and of themselves, constitute sole source justification.

Note: AMES management has obtained an opinion from PWGSC Legal Services relating to the use of the "exclusive rights" provision of the AIT. Specifically,

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Legal Services has advised that there is risk in supporting the exclusive rights provision with a non-exclusive licence. If, however, a company holds the only non-exclusive licence in Canada, Legal has advised that another sole source provision for "the maintenance of specialized products that must be maintained by the manufacturer or its representative" is clearly applicable.

ARB is supportive of exploring more appropriate sole source provisions allowed for under the AIT. In all cases, however, the use of any sole source provision must be fully substantiated and documented on the procurement file.

3.1.1 The sole source justifications in approximately one third of Contract Planning and Advance Approval (CPAA) documents were not consistent with GCRs and/or AIT sole source criteria. Moreover, approximately half the ACRO submissions contained sole source justifications that were not consistent with the sole sourcing provisions of the AIT or the GCRs.

3.1.2 The extent of compliance to the sole sourcing provisions of the Agreement on Internal Trade (AIT) and Government Contracts Regulations (GCRs)

3.1.3 As mentioned, one third of CPAA documents, and approximately half of ACRO submissions, contained sole source justifications that were not consistent with GCRs or AIT criteria. In those cases, the audit team pursued the issue with contracting officers and managers, and obtained verbal clarification that supported GCRs and AIT sole source criteria in some manner. Most of these clarifications, however, could not be validated by the audit team, as little or no documentary evidence was available on the procurement files to validate the sole source justifications cited. In 3 cases, where the existence of licence agreements was the basis for sole sourcing, the audit team requested that AMES provide the agreements for review, in order to validate whether or not they were exclusive agreements which justified directing the contract to a particular firm. In the first case, a signed and up-to-date agreement could not be provided to the audit team. In the second case, a signed agreement was provided. However, a review by Legal Services, at the request of the audit team, indicated that the terms of the agreement were broad enough to have allowed other contractors to serve as the "designated contractor". In the third case, a certification from the OEM was provided in place of a licence agreement. While the certification indicated that the contractor in question was "an Authorized Maintenance Center", it did not

indicate an exclusive arrangement and therefore did not adequately support the sole source justification cited.

3.2 Adequacy of price support and appropriateness of profit calculations

- 3.2.1 In most cases, labour and overhead were in accordance with PWGSC annual negotiated rates. The few exceptions involved special factors that were beyond the control of ILS staff.
- 3.2.2 In 9 of 10 cases involving firm/unit prices, labour hours were reviewed to assess the reasonableness of the estimates.
- 3.2.3 In 2 of 6 cases involving TIES contracts, there were instances where task authorizations were issued with no evidence on file that cost breakdowns were requested or received by PWGSC. While DND is generally responsible for reviewing and issuing task authorizations, the audit team expected to find on the procurement file a copy of a detailed cost breakdown for each task authorization and some evidence that it was verified, to ensure DND is using appropriate information when reviewing and approving task authorizations. The cost breakdown should include a breakdown of the number of labour hours required, by type of labour and using the applicable labour rates detailed in the contract.
- 3.2.4 In 4 of the contracts reviewed, there was no documentation of profit calculations on the file for the original contract. However, in 2 of these cases, documentation on profit calculations was on file for subsequent contract amendments.

3.3 Adequacy of time verification practices

- 3.3.1 Provision for time verification was included in 23 of 24 contracts containing fixed time rates. For most of these contracts, there was some evidence that total time charged was verified for acceptability and accuracy of recording. However, it was observed that the frequency of actual time verifications conducted was inconsistent among contracting officers. In addition, the audit team commonly

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observed that on a given contract, verifications of time charged might be carried out once per year.

3.4 Adequacy of progress payment claim review

3.4.1 The audit team reviewed a sample of progress claims for each of the 25 contracts examined. In most cases, progress payment claim review was found to have been done adequately and appropriately. It was observed that progress payments were in accordance with the contract, and that, in all cases, progress claims were processed promptly by the contracting officer.

3.5 Accuracy of contract coding/information

3.5.1 Procurement summary sheets are the basis for transferring key procurement information to the Acquisitions Information System (AIS) through the Automated Buyer Environment (ABE). The audit team found that several ABE Procurement Summaries reviewed contained coding errors. In four additional cases, Procurement Summaries were not on file, preventing the audit team from validating the accuracy of coding. For the 18 contracts coded using ABE's predecessor (PASS), no coding sheets could be found. As such, the audit team was unable to verify the accuracy of the coding.

3.5.2 Contract Award Notices (CANs) are the primary means of ensuring PWGSC contract awards are transparent to the supplier community, and are required to meet the reporting provisions of the AIT. For all contracts reviewed which were subject to the AIT, the corresponding CAN was not found on the procurement file. We understand that, if a procurement is posted on MERX, ABE automatically issues the CAN after contract award upon release of the Procurement Summary by the contracting officer. Since contracting officers are not directly involved in producing the CAN, such documents are not placed on the procurement file. For those contracts processed using PASS, the corresponding CANs were not retrievable.

3.5.3 General Award Notices (GANs) were, at one time, issued for procurements not subject to trade agreements but are no longer required by policy. Five GANs were provided to the audit team to verify the information contained within them.

In all cases, the procurement information was found to be complete and accurate.

3.6 Appropriateness of Basis of Payment Decisions

3.6.1 The audit team reviewed the appropriateness of Basis of Payment decisions for each of the contracts audited, using the guidelines set out in the Supply Manual. For 24 of the 25 contracts reviewed, the audit team concluded that an appropriate Basis of Payment was selected. Furthermore, the audit team noted that when it was difficult to establish firm prices at the outset of a contract, ILS contracting staff were often able to firm up the Basis of Payment during the contract period as historical information became available.

3.6.2 In one case, there was no evidence that the ceiling price Basis of Payment was firmed up, despite the fact that rate negotiations with the company had been concluded and that all contracted milestone payments had been made. As a result, the Crown may be in an overpayment position.

3.7 Other Observations

3.7.1 *Monitoring and Control:* In 5 of 21 cases, project monitoring and control was found to be weak. This ranged from the absence of progress meetings and/or reports, to the lack of time estimates for individual tasks.

3.7.2 *Dollar Threshold for Task Authorizations:* A letter from the Director, ILS Directorate to DND dated July 16, 1997, effectively increased DND's approval limit for task authorizations (i.e. DND 626 requisitions) from \$75K to \$100K. The contractual documents relating to such cases, however, did not always include a dollar limitation for approval of task authorizations by DND.

3.7.3 *Contractual Clauses:* Clauses relating to travel and living expenses, holdbacks and time submissions were found to be absent or lacking for a significant number of contracts.

With respect to travel and living, in 12 of 19 cases in which travel costs were accepted as a direct charge, either no travel policy was specified in the contract or

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company travel policy was specified with no reference to the name of the company travel policy on the contract.

With respect to holdbacks, while, due to the nature of certain types of R&O contracts, the absence of holdback provisions does not pose additional risk to the Crown, there are other types of contracts where holdbacks could possibly be used to ensure there is adequate incentive for contractors to perform the work, specifically contracts for Depot Level Inspection and Repair (DLIR) and TIES. In all such cases, no holdback provisions were contained in the contract.

Finally, in 7 of 23 cases involving a fixed time rate basis of payment, the contract did not include a clause requiring the contractor to provide a time submission upon completion of the contract.

Conclusions

The audit team found that, with some exceptions, military aircraft R&O contracting is conducted in general compliance with contracting policies and other applicable legislation. In addition, most of the controls and practices in place to ensure that the Crown receives fair value were found to be adequate and effective in terms of achieving what they were intended to do.

There are, however, several major areas of concern, chief among these is the justification for sole sourcing. It is critical that any noncompetitive tendering procedure comply with the trade agreements and/or the Government Contracts Regulations. In that regard, the noted absence of documentary evidence to corroborate the existence and continued validity of Intellectual Property Rights or exclusive licence agreements leaves PWGSC vulnerable in the face of a CITT challenge. This risk is exacerbated by, in some cases, the apparent lack of challenge on the part of PWGSC contracting officers as to the validity of sole source justifications. There is also a risk that ACRO submissions to SPAC may not be providing SPAC members with complete information upon which to make an informed decision.

Sole source justifications must be clearly linked to the GCRs and, where applicable, the AIT.

When licence agreements and IPRs are used as sole source rationale and there is some question as to their exclusivity, it would be more appropriate to determine the applicability of other sole source provisions available under the AIT. In cases where no AIT sole source provisions can be fully supported, the competitive process should be used via a Notice of Proposed Procurement (NPP).

The issuance of ACANs without fully supported sole source justifications, poses a significant risk to the Crown, particularly as public scrutiny of the procurement process intensifies. Indeed, external stakeholders, including the Auditor General and the Public Accounts Committee, are increasingly demanding such discipline. Improvements are also required in the quality of the justifications for sole source provided in the CPAAs. It is clear, for example, that, with an approval for sole source from SPAC, contracting officers do not necessarily focus on ensuring the CPAA provides strong, precise sole source justifications. In some cases, the SPAC approval, coupled with the publication of an ACAN, is used for justification. The assertion by AMES management that recent CPAAs contain appropriately referenced sole source justifications, and that staff will be reminded to continue this practice, is recognized and seen positively by the audit team.

With respect to the other audit findings, the audit team has concluded that:

- more frequent time verification practices are warranted to provide assurance that contractors are accurately recording time;
- procedures relative to travel and living should be tightened to ensure there is a basis for determining the acceptability of such charges;

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- ensuring accurate procurement information within Procurement Summaries is essential, so that management information is reliable and that the reporting requirements of the AIT are met;
- task tracking and control on TIES and publications contracts requires improvement. The importance of providing adequate cost estimates and documenting progress is fundamental to demonstrating value and estimates should be obtained from suppliers with regular updates.
- the use of holdbacks on progress payments for TIES and DLIR contracts could improve the Crown's ability to hold contractors to their contractual obligations;
- incorporating dollar threshold limits for DND approval of task authorizations in contractual documents is warranted to help ensure DND does not exceed its delegated authority.

Recommendations

It is recommended that:

1. a) *for contracts anticipated for renewal, ILS Directorate ensure the sole source justifications used are in accordance with the provisions of the AIT and are supported on file by documentary evidence. ILS Directorate should review licence agreements and IPRs to determine their continued validity and whether they fulfill the relevant AIT limited tendering provision. Such reviews should be done well in advance of contract renewal to allow sufficient time to ensure that sole source justifications are in accordance with the requirements of the AIT and are fully documented;*

b) *in concert with the above activity, contracting officers review future sole source justifications prior to ACRO consideration and actively perform a challenge function, to ensure that each sole source justification is in keeping with the AIT and/or GCRs. Evidence of such review should be on the procurement file;*
2. *ILS Directorate incorporate the following into contractual documents:*
 - a) *holdback provisions, where feasible, on DLIR and TIES contracts;*
 - b) *for cases involving a fixed time rate basis of payment, a clause requiring the contractor to provide a time submission upon completion of the contract;*
3. *ILS Directorate formalize with DND the dollar limit thresholds for approval of task authorizations;*
4. *ILS Directorate increase time verification efforts. Due to resource constraints, a sampling methodology could be used to address the current gap in this area;*
5. *ILS Directorate increase efforts in the area of coding contracts to ensure a higher level of accuracy. A possible solution could involve review of Procurement Summaries by*

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Contract Quality Control (CQC) staff. Moreover, the ramifications of inaccurate coding should also be reinforced with contracting officers.

