

AUDIT OF CONTRACTING FOR SERVICES JUNE 2004

Department of Foreign Affairs and International Trade Office of the Inspector General Audit Division (SIV)

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EXECUTIVE SUMMARY

The Department has made significant headway in instilling rigour in the management of its contracting for services in the last five years, but there are major and minor shortcomings that still need to be addressed. Managerial accountability and contracting practices have continued to improve since benchmark conditions were described in the previous SIV audit of contracting for services in 1998. Such contracting is taken much more seriously in the Department today for both internal accountability reasons and the external values-and-ethics-oriented scrutiny that is impacting on the Public Service in general.

A control framework is in place in the Department that adds rigour to the management of the contracting process. Its elements are: a contracting Centre of Expertise (Contracting Services Section -SPPG (formerly SMFG)); a Departmental Contract Review Board (DCRB); Contract Review Boards (CRBs) at Headquarters and missions; and structured ongoing training in the area of contract management. In terms of practice, there is now a broader pool of potential suppliers invited to bid on the larger departmental contracts, i.e. those above the \$84,400¹ NAFTA (North American Free Trade Agreement) threshold. Since April 2000, use of MERX (Government electronic bidding system) has increased by 38.7%, with a corresponding decrease in the traditional method whereby only selected suppliers are invited to bid directly.

The management of service contracts continues to operate without a dedicated information system. In consequence, it is not possible to determine with precision the volume of contracting activity, although the Department's financial system (IMS) shows \$147.7 million spent in 2002/03. The Department's annual report to central agencies is incomplete in that the contracting activity reported relates only to those fund centres that respond in a variety of fashions to an annual call letter. It is anticipated that this situation will be resolved when the new version of IMS is released in November 2004, which will incorporate the appropriate mandatory controls and records.

The Department's largest user of service contracts is the Information Management and Technology Bureau (SXD) which let 269 contracts in fiscal year 2002-03 having a value, including amendments, of \$19 million. Major projects accounting for these higher than normal numbers are the Infrastructure Renewal Project and the InfoBank Project. This has meant that a third of SXD's workforce is under contract, suggesting that savings could be realized if SXD would explore converting some of these resources to Full-Time Equivalents (FTEs). Some consultants have been under contract with SXD since 1996. SXD has established as a priority the conversion of contractors to FTEs, where appropriate, in its Human Resources Strategic Plan for this year. Of the 269 contracts, 46 were reviewed by the DCRB because of their value.

¹ Amended to \$89,000 effective January 1, 2004.

This represented 53.2 percent of the total value of the contracts let by SXD. The traditional competitive method was employed in all 46 cases. In many cases, however, only two bids or less were received and in 18 cases, the winning firm was the one representing the incumbent contractor. Based on these findings, it is recommended that the use of MERX be explored, which could lead to a larger pool of qualified suppliers bidding on these contracts and, therefore, result in a more competitive process.

SPPG, the Centre of Expertise, is an important mechanism to improve contract management. In keeping in line with modern comptrollership and to reduce risks, an in-house intranet Web site was developed which hosts more than 40 documents pertaining to policy issues, templates and guides. It also contains an innovative automated program, designed to facilitate the complex issues of intellectual property. The Web site enables departmental delegated officials with contracting authority to conduct procurement and contracting processes more efficiently. The Section has had difficulty in staffing and retaining employees, which has impacted its capacity to monitor contracting activity and to provide advisory services. Some clients would like SPPG to be more service and solutions oriented. Others complain about timeliness of service and sometimes perceive SPPG as overly challenging. Having service standards as a reference point for performance would help clients better understand the role of SPPG, its impact in the Department, and what they can expect. It would also clarify the clients responsibilities when contracting. A strategic plan, together with an annual work plan, is also needed.

The DCRB's advisory role can be strengthened with the addition of the Director General of the newly formed Headquarters Administration Bureau (SPD) and membership from Bureaux most actively engaged in contracting (SXD, SRD and BCD). This will promote more effective comptrollership within the Department. The DCRB recognizes the fine line that exists between ensuring due diligence and interfering in management processes, but has felt hamstrung when encountering issues dealing with the integrity of the selection process. It is suggested that the DCRB report to the Management Committee.

The mandate of the Headquarters CRBs needs to be better defined and understood. Each CRB functions differently and their membership varies. Although contractor selection rests with the manager, some CRBs are making these decisions. The idea of a CRB retreat to standardize processes and share lessons is welcomed.

There has been an increase in the use of oral commitments, which then must be followed up with Confirming Orders in lieu of written contracts for services with suppliers. Since 1999, 32 cases have amounted to over \$500,000, 21 taking place in 2003. Confirming Orders are not intended to be a substitute for established contracting procedures, and the circumstances surrounding their use violate contracting regulations. These cases relate to only a few Bureaux in the Department.

Although most missions have active CRBs (25 of the 30 surveyed), the dollar value thresholds for their use vary, and only 20 of them use the managerial checklist. CRBs are not always reviewing OGD contracts even though they are issued in the name of the Mission. Only one-third of the missions surveyed responded to the last call letter on contracting activity. Three missions are not aware of the departmental contracting Web site and missions generally are not using SPPG for advice.

Management and staff involved in contracting continue to lack the requisite training. Contracting course participants have concerns with the length of the courses and the fact that they are not being delivered by professional trainers. Course content developed by SPPG received high marks.

A sample of 50 Department-wide contract files (\$4.47 million) were examined at Headquarters, including 26 which were "sole-sourced", 19 which employed the traditional competitive process, and five which were call-ups against a Standing Offer or Supply Arrangement. The review indicated that contracting rigour has not completely reached everyday practice: the effectiveness of the selection process is difficult to gauge owing to the lack of documentation in files; the managerial checklist is seldom used; many contracts connote an employer-employee relationship, with little or no risk assessment undertaken; rationale for using contractors over other forms of engagement is seldom documented; ten contracts were signed after work had started; 14 contracts, because of the amended values, suggest poor planning; and there is no measurement of contractors' performance.

RECOMMENDATION STATUS

This report contains 24 recommendations. Headquarters management has reported to each recommendation indicating the action already taken or decision made, including the steps to be undertaken in the future. Headquarters, in general, agrees with all recommendations. Given the responses received, one recommendation has been fully implemented and the others are in the process of being actioned. In most cases, a specific time frame for their implementation has been indicated.

INTRODUCTION

- 1.1.1 An audit of contracting for professional and other services was conducted during the period September to November 2003. This audit is being carried out as a result of the Treasury Board Decision of April10, 2003 that was part of the response to the Department's request for ratification of an amendment to a DFAIT contract. This Decision indicated that, in view of the circumstances surrounding the submission (contract splitting), the Treasury Board Ministers expected DFAIT to fulfill an earlier commitment (made in 2001) to conduct a comprehensive audit of service contracts in 2003.
- 1.1.2 In recent months, the federal public service has been under intense scrutiny from a Parliamentary Committee, the media and the Office of the Auditor General regarding financial management and contracting practices. The Secretary of the Treasury Board in a communique to all Senior Financial Officers emphasized that: "It is essential that there be a robust regime with respect to financial and contract management supported by clearly identified processes for effective comptrollership, and that you work with all the managers in your department to ensure that they exercise their responsibilities properly."
- 1.1.3 In 1998, the Audit Division (SIV) conducted an audit on contracting for services that identified several shortcomings in the contracting process. These included an absence of a corporate focus for the contracting function, a deficient managerial information system, lack of standardized contracting procedures and a need for more meaningful challenge mechanisms at the delivery level to ensure receipt of best value for money and respect for the Government's contracting policies. In February 2000, taking into account many of the recommendations of the 1998 audit, DFAIT submitted a Plan to implement a strategy on contract reform to the Treasury Board Secretariat. In the autumn of 2000, the International and Domestic Financial Management and Contracting Services Division (SMF) commissioned a consultant to assess the contracting framework in DFAIT and assess its compliance with TB guidelines and departmental requirements. In 2001, SIV, in a follow-up audit, concluded that it would be more appropriate to conduct a full comprehensive audit in 18 months time (i.e. 2003) to allow the intended corrective actions identified in the Plan to be fully implemented. This report is the result of that full comprehensive audit.
- 1.1.4 In fiscal year 2002-2003, according to the Department's financial system (IMS), the Department spent \$147.7 million on service contracts of which \$53.7 million was contracted through PWGSC.

SCOPE OF AUDIT AND CRITERIA

2.1 Scope of Audit

2.1.1 The scope of this audit focussed on contract management with emphasis on the integrity of the selection process and the role and functioning of the Contracting Services Section (SPPG, formerly SMFG), the Departmental Contract Review Board (DCRB), and the Contract Review Boards (CRBs) in each Branch. Further, the audit determined if contracts had been awarded and administered in accordance with established legislation, regulation, policies and procedures, and carried out with appropriate prudence and probity. The audit did not examine goods and construction contracts. The audit focussed mainly on contracting activities at Headquarters although thirty missions were contacted by telephone to determine, amongst other things, if there was a functioning CRB in place. The missions' relationship with SPPG was also reviewed.

2.1.2 The audit work concentrated primarily on:

- Following up on the 1998 audit recommendations, assessing if the contract reform initiatives have been fully realized, and if the suggestions contained in the SMF Consultant's Report have been implemented;
- Assessing the management control framework, including the role and function of the Contracting Services Section (SPPG), the DCRB, the Area Management CRBs and Mission CRBs;
- Evaluating the resources allocated to the contracting process, including workload assessment, training requirements and actual training offered;
- Assessing management information systems and corporate analysis capability, including data input, information gathering and reporting; and,
- Determining if service contracts are being managed in accordance with the
 principles of Modern Management/Comptrollership and in compliance with the
 Financial Administration Act, Government Contract Regulations and
 departmental contracting policy. This included reviewing the awarding of
 contracts to ensure that justification is included on the contract file for noncompetitive contracts and that the competitive process is conducted in an open,
 fair and transparent manner.

2.2 Audit Criteria and Work Undertaken

2.2.1 Audit Criteria

The audit criteria used for this audit were drawn from:

The Treasury Board Secretariat Contracting Policy which includes the Government Contracts Regulations (GCRs); current DFAIT contracting policies; the North American Free Trade Agreement (NAFTA); the Canadian International Trade Tribunal Act (CITT); the Values and Ethics Code for the Public Service; and modern management practices.

2.2.2 Work Undertaken

The work conducted during the audit included:

- Reviewing the above audit criteria;
- Reviewing DFAIT audit reports (1998 and 2001), the SMF consultant's report on contracting, DFAIT's reform paper on contracting and a recent CIDA audit report on Sole Source Contracting;
- Reviewing the contracting Web sites of DFAIT, PWGSC, TBS and MERX (Government Electronic Tendering System);
- Interviewing the four employees of the Contracting Services Section (SPPG), the
 Director of SMF, the Chair of the Departmental Contract Review Board, all nine
 AMAs chairing Contract Review Boards, the SXMP Senior Procurement Officer,
 two CAM contracting staff, the BCD Operations Officer, three SRBE officers and
 the Directors of SMS and CFSM.
- Interviewing the CIDA Contracts Manager (Americas), a DND Procurement Officer and a Case Officer at CITT;
- Contacting Management/Consular Officers at 30 missions by telephone regarding their contracting practices;
- Reviewing a sample of 50 contract files representing a cross-section of departmental service contracting activity;

- Consulting with the TBS Policy Advisor to Departmental Senior Financial Officers (SFOs) with respect to the role of the SFO in contracting management; and,
- Consulting with PWGSC Policy Director regarding NAFTA exemptions.

AUDIT FINDINGS

3.1 Response to Previous Recommendations

- 3.1.1 Many of the recommendations contained in the 1998 SIV audit report and the SMF Consultant's Report have been implemented. The Department has instituted a "corporate centre of expertise" with the establishment of the Contracting Services Section (SPPG) headed by a Deputy Director (PG-06) who is a professional Contracts Officer. This Section has recently moved from the Corporate Finance, Planning and Systems Bureau (SMD) to the newly formed Headquarters Administration Bureau (SPD), reporting to the Director of the Contracting and Procurement Division (SPP). Contract review mechanisms have been implemented at the departmental level. At Headquarters, a Departmental Contract Review Board (DCRB) has been established to review all contracts above the North American Free Trade Agreement NAFTA threshold. SPPG is the Secretariat and Advisor to the DCRB. Contract Review Boards (CRBs) at the Bureau and Branch levels have also been established which are chaired by the Area Management Advisors (AMAs) to review contracts below the NAFTA threshold. Mission Contract Review Boards (CRBs) run independently from Headquarters but mirror that of the DCRB for all contracts both below and above the NAFTA threshold. SPPG provides advice and guidance to all Contract Review Boards, when required.
- 3.1.2 A significant recommendation of both the SIV Audit Report and the SMF Consultant's Study has yet to be implemented. There continues to be no reliable management information on contracting activity in the Department. As a consequence, the Department is unable to fully meet its regulatory contracting reporting obligations to central agencies. Currently, the Department attempts to satisfy these requirements through an annual call letter to departmental fund centres asking them to report on their volume and dollar value of contracting. Unfortunately, many fund centres, including missions, fail to respond to the call letter, with the result that the Department's report to the central agencies is both inaccurate and incomplete. Good comptrollership calls for properly integrated business processes to be in place. This includes systems to allow for effective monitoring, review and reporting with respect to financial management and contracting management functions. Without such systems, SPPG is unable to fully carry out its mandated requirement to monitor and report accurately on contracting activity within the Department.
- 3.1.3 Based on SPPG's Methods of Procurement Report for contracts over the \$84,400 NAFTA threshold and on contracts submitted to the DCRB, there appears to be a broader pool of potential suppliers being invited to bid on the Department's larger contracts. The report indicates that there has been an increase of 38.7% in the usage

of MERX over the period April 2000 to October 2003 with a corresponding decrease of 41% in the traditional competitive method, which consists of soliciting three or more bids directly with potential vendors. The total number of cases presented to the DCRB has increased steadily from 34 in 2000 to 111 in 2002. Nevertheless, sole source contracting as a method of procurement has been increasing by approximately 5% per year over the past two fiscal years. Due to the lack of a reliable contracting information system, there has not been any measure of the procurement methods used for contracts below the NAFTA threshold. Since 2002, SXD has maintained a database that keeps track of all professional services contracts processed through SXM.

3.1.4 This audit is being conducted partly in response to the Treasury Board Decision of April 10, 2003 whereby TBS was concerned with a contract splitting case in the Communications Bureau (BCD). The audit found that BCD has improved its contracting processes. BCD now has supply arrangements in place and rely on several qualified firms for the acquisition of transcription services for the Department. Recently the Bureau placed a request for standing offer on MERX for 40 days. Moving to standing offers is expected to be more cost beneficial than the existing supply arrangements. BCD's resourcing efforts resulted in greatly reducing its total number of contracts by means of hiring term employees to do tasks previously done by contractors. Contractors are no longer allowed to work on site in BCD offices. These findings complement the review conducted by SMD on specific activities in the areas of sponsorship, advertising and polling (public opinion research) which largely focussed on BCD. The report was issued to Treasury Board on June 28, 2002 and demonstrated that DFAIT is meeting its obligations in the areas specifically identified in that review.

3.2 Contracting Services Section (SPPG)

- 3.2.1 SPPG, which now reports to the Director of SPP, was established in 2000 and is headed by a Deputy Director (PG-06) who is supported by two Senior Contracting Advisors (PG-04s) and a Data Base/Informatics Advisor (AS-01). The current Deputy Director is the third in the Section's short history. The Senior Contracting Advisors and Informatics positions are new as of January 2003. One Senior Contracting Advisor left DFAIT during the course of this audit, thus reducing the capacity of the Section.
- 3.2.2 The Section has a departmental-wide mandate to advise and assist in the preparation of all contracts regardless of value. The ADM Corporate Services' Reform Memorandum on Contracting in January 2000 describes the Section as a "walk-in contracting service centre". In addition to its advisory function, SPPG is responsible for, *inter alia*, reporting to Treasury Board, assisting with the development of training courses, maintaining the Department's intranet site on contracting, serving as Secretary

to the DCRB, developing and maintaining CRB standards and monitoring CRBs to ensure consistency and compliance with requirements. To date, largely because staff have only been recently hired, SPPG, as called for in its mandate, has not been able to conduct periodic assessments of the CRBs to ensure consistency and compliance of the contracting rules and regulations. Based on the audit findings of the sample of 50 contract files reviewed and described in section 3.9 of this report, the conclusions reinforce the importance for SPPG to carry out its assessment function.

- 3.2.3 SPPG spends the bulk of its time preparing contract cases for review by the DCRB. This involves working closely with the responsible contract manager. With few exceptions, all contracts, standing offers and supply arrangements that have been presented to the DCRB have been accepted but in some cases with conditions attached. The majority of the contracts presented to the DCRB originate in three areas of the Department, namely, the Information Management and Technology Bureau (SXD), the Physical Resources Bureau (SRD) and the Communications Bureau (BCD).
- 3.2.4 SPPG, in preparing for the DCRB, generates observations for each case presented. DCRB, in reviewing these observations, makes recommendations, many of which have conditions attached. DCRB recommends on these cases based on the assumption that SPPG will follow up with the manager to ensure the conditions are met. Some examples of conditions are: changing the dates of the contract to match the date of signing, suggesting changes to improve the statement of work, and having the client institute better control procedures to track call-ups against standing offers. SPPG was not following up on these conditions until it was brought to its attention by the audit team. SPPG immediately instituted a procedure to redress this issue.
- 3.2.5 Staff in SPPG possess the required technical competencies to meet SPPG's expected results. The Section developed and introduced an intranet site on contracting services which won a Government Award of Excellence. Templates were produced and are now available online for such things as Requests for Proposals; Standing Offers and Supply Arrangement; sample letters to bidders; and a short form Letter of Agreement for contracts up to \$25,000. It also developed a managerial checklist, an excellent tool, but which is not always used when submitting contracts to the CRBs for scrutiny.
- 3.2.6 Notwithstanding SPPG's technical know-how and capability, some departmental clients who interact with SPPG are not always satisfied with its service. This applies particularly to departmental areas whose contracts regularly go to the DCRB for approval. Some clients believe strongly that significant cost and effort are unnecessarily incurred due to the time spent in challenging issues with SPPG. In some cases, some clients who have already received legal opinions on their contracting

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procedures face opposition from SPPG. SRD and CFSM are now considering engaging the services of contractual experts to work with SPPG to assist in a continual program of contracting improvement, and to reduce their dependence on legal counsel for relatively routine contracting advice. At the same time, SPPG needs to be better balanced between ensuring control and being service-oriented and client-focussed in its dealings with stakeholders. Currently, relationships are sometimes strained, and it is essential that SPPG be viewed as a source of knowledge where advice can be sought that will add value to the overall contracting process. During the audit, SRD and SMF instituted procedures that give better recognition to both SPPG's role and the responsibilities of line management.

- 3.2.7 Clients, in general, find SPPG slow in responding to their needs. Clients respect SPPG as the centre of expertise but, when they submit a request, they expect a timely response. Some clients resent being directed to visit the contracting intranet site as a solution to their problems. The introduction of service standards would be helpful in letting clients know who in the Section is knowledgeable in a particular area, the quality of service that clients can expect and the time-line in which these services can be delivered.
- 3.2.8 SPPG has an oversight responsibility with respect to ensuring that the contracting processes throughout the Department are in compliance with both the Department's policies and procedures, and that the Government Contracting Regulations (GCRs) and the various obligations of the Trade Agreements are adhered to. It is recognized that, over the past year, SPPG's new resources have been stretched to the limit with respect to its work with the DCRB and dealing with a challenging learning curve. This has been magnified by the recent departure of a Senior Contracting Advisor. Staffing action was immediately taken to fill that position. It is essential that SPPG develop a long-term strategic plan accompanied by a results-based annual work plan, so that resources can be allocated appropriately and senior management informed of any shortfalls.

Recommendations for SPPG

- 3.2.9 Develop a long term strategic plan setting out the Section's goals and objectives, accompanied by annual results-based work plans.
- 3.2.10 The annual work plan should Identify expected results, reach, required resources and key activities and the time frames for the achievement of results.

- 3.2.11 Conduct periodic assessments of Headquarters CRBs to ensure consistency and compliance with contracting rules and regulations.
- 3.2.12 Develop client service standards to act as a reference point for measuring SPPG performance and to inform clients of the levels and timeliness of services to be delivered.
- 3.2.13 Develop a more proactive approach to marketing the services available to all clients, including creating an awareness of the contracting knowledge within the Section, the services that are available, and the intranet site and its associated contracting tools.
- 3.2.14 Apprise the DCRB that the conditions it has proposed with respect to submitted contracts have been met.

SPPG Action and Time Frame

- 3.2.9 SPPG will develop a long-term strategic plan setting out the Section's goals and objectives, accompanied by annual results-based measurable work plans.

 Time frame Due date: March 31, 2005.
- 3.2.10 The annual work plan developed by SPPG will identify expected results, required resources and key activities and the time frames for the achievement of results.

 Time frame Due date: March 31, 2005.
- 3.2.11 SPPG will conduct (for fiscal year 2004-2005) an assessment of Headquarters CRBs to ensure consistency and compliance with contracting rules and regulations. Time will only allow for one assessment, due to preparation of review material and completion of assessments.

Time frame - Due date: March 31, 2005.

3.2.12 SPPG will develop client service standards (also used as a marketing tool) to act as a reference point for measuring SPPG performance and to inform clients of the levels and timeliness of services to be delivered. For instance, clients will be informed on a *List of Provided Services* of turn-around time, feed-back requirements to SPPG for services rendered.

Time frame - Due date: September 30, 2004.

3.2.13 The List of Provided Services will promote a more proactive approach to marketing the services available to all clients, including creating an awareness of the contracting knowledge within the Section, the services that are available, and the intranet site and its associated contracting tools.

Time frame - Due date: September 30, 2004.

3.2.14 SPPG will inform their client(s) to return a copy of the approved procurement documentation after the review of the DCRB. SPPG will then have documented evidence that its recommendations were taken into consideration.

Time frame - Due date: Procedure already in place.

3.3 The Departmental Contract Review Board/Contract Review Boards

- 3.3.1 Contract Review Boards were implemented in May 2000 to provide an independent review and assessment of the contracting process followed by departmental managers. A three-tier system for review and advice was established at Headquarters, with all contracts above the NAFTA threshold referred to the Departmental Contract Review Board (DCRB) while those below the threshold were referred to the CRBs coordinated by the Area Management Offices. Contract Review Boards (CRBs) at Missions abroad were also established to review all contracts below and above the NAFTA threshold. Mission CRBs mirror that of the DCRB at Headquarters.
- 3.3.2 The DCRB is made up of three Directors General (DGs) and three Directors, including an Area Management Advisor. The Deputy Director, SPPG, is the Secretary and Advisor for the Board. DCRB members are appointed by the ADM, Corporate Services. The DCRB has had the same Chair since it was originally formed in May 2000. Neither the Director General of the newly formed Headquarters Administration Bureau (SPD) nor the Department's Senior Full-time Financial Officer (SMD) is a member of the DCRB. Departmental managers tend to work with SPPG which presents their cases to the DCRB with observations. Contracting managers are not attending DCRB meetings to present their selections.
- 3.3.3 The DCRB is not a sub-committee of any of the Department's senior executive committees, and, as a consequence, if there is an issue that is troubling, the DCRB is limited in its capacity to resolve significant issues through a higher level governance structure. The DCRB's mandate, in terms of functional authority, needs to

be better defined so that all stakeholders have a clear understanding of its role. Ultimately, the decisions for selection and awarding of contracts rest with the line manager who has delegated contracting authority. The DCRB realizes that there is a fine line between ensuring contracting due diligence and interfering with managerial responsibilities to pursue objectives.

- 3.3.4 There is a need for the DCRB to bring significant contracting issues to a higher authority. The Management Committee, at least, needs to be kept abreast of these issues and SPD needs to take decisive action, when necessary. The DCRB should know that critical issues should be brought to the Management Committee's attention. In the past this was not the practice and, as a result, one DG member of the DCRB resigned because of the inability to deal with the contracting practices in a particular Bureau.
- 3.3.5 Consideration should be given to having the Chair of the DCRB serve an established term. The Department's Director General of the Headquarters Administration Bureau (SPD) needs to be represented at DCRB meetings. Adding a representative from Bureaux most actively engaged in contracting could also be considered. This would strengthen the advisory role of the DCRB.
- 3.3.6 CRBs at Headquarters are chaired by the Branch Area Management Advisors. Originally there were eleven CRBs but with the recent integration of the AMA offices for the T and E Branches (TEAM) and the elimination of the CRB for the Americas Branch, this number is currently reduced to nine.
- 3.3.7 The CRBs all function differently and their memberships vary. Some have DGs and Directors while others have only AMA staff. The role of the CRBs is loosely understood. Some CRBs make decisions approving contracts while others perform an advisory function. There is little supporting documentation reflecting the depth to which CRBs challenge issues such as employer-employee relationships, contract splitting and the lack of competition. The managerial checklist does not always accompany the contract and, when used, is not always in the same format. A one-day retreat is being suggested to bring all CRB members together to discuss issues, share knowledge and best practices, and to bring more standardization to the process. CRBs welcome this.

Recommendations for the ADM Corporate Services (MKM)

3.3.8 The role of the DCRB and CRBs at Headquarters should be clearly defined and communicated to departmental staff in order to illustrate their importance in ensuring due diligence and rigour in the contracting process. It should make clear that accountability rests

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with managers and that the CRBs perform an independent review and advisory function in scrutinizing the selection and awarding of contracts.

- 3.3.9 The DCRB's reporting relationship should be to the Management Committee.
- 3.3.10 The review and advisory role of the DCRB should be strengthened with the addition of the Department's Director General of the Headquarters Administration Bureau (SPD) and senior managers from the Bureaux most actively engaged in contracting.
- 3.3.11 The Chair of the DCRB should be appointed for a specific term to allow for rotation every two to three years.
- 3.3.12 Managers should be given the opportunity to present their contract proposals to the DCRB, when considered necessary.
- 3.3.13 The role, composition, membership qualifications and operations of the Headquarters CRBs should be standardized. CRB members should be brought together to discuss issues and to share knowledge and best practices.

MKM Action and Time Frame

- 3.3.8 MKM will clearly define the role of the DCRB and CRBs at Headquarters and communicate to departmental staff in order to illustrate their importance in ensuring due diligence and rigour in the contracting process. Clarifications will stress requirements for accountability of managers, independence of CRB reviews and advisory functions in scrutinizing the selection and awarding of contracts.
 - Time frame Due date: September 30, 2004.
- 3.3.9 MKM will review the DCRB's reporting relationship and explore the possibility of having DCRB report to the Management Committee.

 Time frame Due date: September 30, 2004.
- 3.3.10 MKM will review DCRBs mandate and consider that the review and advisory role of the DCRB be strengthened with the addition of the

Department's Director General of Headquarters Administration Services (SPD) and senior managers from the bureaux most actively engaged in contracting.

Time frame - Due date: September 30, 2004.

- 3.3.11 MKM will modify the actual process to appoint the Chair of the DCRB for a specific term to allow for rotation every two to three years.

 Time frame Due date: September 30, 2004.
- 3.3.12 MKM will modify the actual process to give Managers the opportunity to present their contract proposals to the DCRB, when considered necessary.

Time frame - Due date: September 30, 2004.

3.3.13 MKM will ensure that, whenever possible, the role, composition, membership qualifications and operations of the Headquarters CRBs are standardized. The business process change will allow CRB members to be brought together to discuss issues and to share knowledge and best practices.

Time frame - Due date: September 30, 2004.

3.4 Information Management and Technology Bureau (SXD)

- 3.4.1 SXD is the Department's largest user of service contracts. The Bureau's records indicate that it let 269 contracts and amendments in fiscal year 2002-03 having a value of \$19 million. IMS records show that SXD's service contract expenditures for that same year amounted to \$21.5 million².
- 3.4.2 SXD uses a variety of methods to contract, including sole-sourcing, PWGSC (in 54 percent of the cases) and the traditional approach. The DCRB, because of the contract value, reviewed 46 of these contracts which represented 53.2 percent (\$10.9 million) of the total value of SXD's contracts. In all 46 cases presented to the DCRB, the traditional method of competition was employed (15 firms on average were invited to compete). In these cases, 19 resulted in only two bids being received and in six cases, one bid was received. In 18 of the cases (39.1 percent), the firm representing the incumbent contractor was the winning bid. The DCRB has commented in its record of recommendations that the Requests For Proposals (RFPs) sometimes

²The difference between these amounts can be explained by the multi-year nature of some of its contracts.

appear restrictive in that the competition could be perceived as being limited to the incumbent as the only qualified bidder. The Audit Team believes there is room to increase the competitiveness of the process by using MERX as a means of attracting a larger pool of qualified suppliers to bid on these contracts.

- 3.4.3 It is significant to note that one-third of the human resources in SXD are under contract. Of SXD's 671 positions, 414 are staffed and there are approximately 200 consultants under contract at any one time. SXD indicated that this particular fiscal year was the mid point of a three year Program Integrity funding influx for large projects including InfoBank, a major global infrastructure deployment and several GOL projects. It offered that SXD did not have the capacity without contracting for required resources. Notwithstanding, 53 consultants have had continuous contracts with SXD for several years and SXD continues to contract at significant cost when full-time employment could potentially realize material savings. SXD, in its current Human Resources strategic planning process, has set as one of its priorities the conversion of some functions carried out by contractors to Full Time Equivalents (FTEs), where appropriate.
- 3.4.4 MERX (whose predecessor was the Open Bidding Service or OBS) was not used in the 46 cases presented to the DCRB because of a NAFTA exemption. A memorandum from the Trade Law Bureau (JLT) dated January 24, 1994 provided a legal opinion that service contracts for the SIGNET communications system are not subject to NAFTA requirements, specifically because of Article 1018 which exempts procurements that are indispensable for national security or for national defence purposes. In addition to the national security exemption, NAFTA allows the use of limited tendering procedures (Article 1016) for consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences.
- 3.4.5 The fact that SXD uses this NAFTA exemption has been the subject of much debate in the Department. The DCRB is of the opinion that each case warrants its own justification for using this NAFTA exemption. Other government departments, namely DND and CIC, post their informatics needs on MERX stating the security requirements and citizenship requirements of the firm's personnel requiring access to classified information. It is not clear what sets SXD apart from these other departments in invoking this exemption. More justification should be provided, on a case-by-case basis, explaining the appropriateness of the use of this exemption.
- 3.4.6 MERX can be used in cases where there is a national security risk for generating a list of prospective suppliers. SXD could post a letter of interest (LOI) or request for information (RFI) on MERX stating that it is looking for IT firms to perform consulting assignments for DFAIT. The LOI/RFI can seek out firms that have skilled

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Canadian personnel with the requisite security clearances as well as being Canadian majority owned and controlled. The firms that meet the aforementioned specifications can be requested to submit proposals.

Recommendations for SXD

- 3.4.7 SXD should put a plan in place to continue to explore best practices in contracting for IM/IT services which would include a combination of different vehicles with a goal of acquiring the best resources at optimum value for the Department.
- 3.4.8 Establish a time line for converting identified contracted positions to FTEs.
- 3.4.9 When not using MERX for reasons of security with respect to large service contracts, justification should accompany the procurement documentation.

SXD Action and Time Frame

3.4.7 Agree. This is an ongoing activity for SXD.

In July 2003, SXMP established a group representing different areas of SXD to discuss their ongoing challenges in contracting for services. SXMP took the comments received and proceeded to review best practices from other government departments (i.e. CIC, DND, CCRA and HRDC) and also had discussions with services procurement experts at PWGSC to determine what could be done to ensure best resources at optimum value in a timely, efficient manner.

It was determined through this ongoing work that SXD should continue to use the PWGSC established Government On-Line vehicle, make more use of other vehicles available through PWGSC and where appropriate use the "Traditional" method for contracting for services. We also determined that given the challenges associated with the use of the above vehicles, SXD would proceed to establish, through PWGSC, a Supply Arrangement to be used as an added contracting tool. A requisition has been forwarded to PWGSC to initiate this process which will be, as was the case for the vehicles

established by CIC, DND, HRDC and others, competed through MERX. SXD hopes to have this vehicle in place by the fall of 2004.

In continuing to explore best practices, SXD's Deputy Director, Procurement, Contracting and Asset Management has been invited by the Senior Director IT Procurement, PWGSC to sit on a working group as a representative of client department(s) for their in-depth review initiative to improve IT Professional Services procurement methodologies. Through this initiative, SXD will have direct input and knowledge of PWGSC's direction, other departments initiatives and approaches to IT contracting, share concerns and challenges and leverage best practices employed by all committee participants.

3.4.8 Agree. This is an ongoing activity for SXD.

As reported in this audit findings, a number of consultants have had long-term contracts with SXD and this needs to be addressed. SXD had concluded the same through a review conducted and reported in September 2002. SXD then began a process to identify which contracts were conversion opportunities and which should, due to the specialized skill set or evolving requirements, continue to be contracted out through a fair, open and competitive process.

Conversion opportunities were identified with input provided from the responsible managers. These opportunities are being addressed, where justified, through the Bureau's Human Resources Strategic Planning exercise. There are definite challenges in creating and staffing additional FTEs while at the same time ensuring the continued provision of essential services.

It should be noted that of the 54 long-term consultants identified in SXD's September 2002 report, 22 are no longer here and five were converted to FTEs.

3.4.9 Agree.

While SXD will comply with this recommendation, we do not, however, fully support the unequivocal use of MERX because we are concerned that this may actually increase the cost (time and effort)

of procurement without achieving major added benefits (little if any value added).

At this time, we are filling some requirements using MERX instead of the "Traditional" limited tendering process and we will be maintaining statistics of this activity. SXD will report by late fall 2004 of any benefits or additional costs when using MERX.

It should be noted that Treasury Board is challenging service providers to improve procurement processes to obtain benefits for tax-payers by reducing the cost of goods and services by 10%; reducing processing time by 50% and reducing cost of purchasing by 10%. To achieve this, the Government of Canada is looking within and working closely with the business community to simplify business processes. Again, the overall goal is to make it more cost effective for both the private sector and the Government to do business while maintaining an open, fair, transparent, and competitive process, plus stand the scrutiny of the Canadian public.

3.5 Oral Commitments

3.5.1 The Department has entered into situations where oral commitments are made in lieu of written contracts. The frequency of these situations has increased from one case in 1999 to 21 in 2003 for a total of 32 cases amounting to \$503,465 over the four year period. This has required the Department, specifically SPPG, to issue what is referred to as a "confirming order" in lieu of a written contract. This enables the Department to make payments to claimants/suppliers in situations where demands are made for payment of invoices where there is no written contract. The circumstances surrounding the use of confirming orders violate contracting regulations. Treasury Board requires that terms and conditions of any contract be formulated in writing before the fact and that officials responsible for the management of contracts should be made aware of possible institutional or personal sanctions for unacceptable contract administration, or where contracting policy is ignored. The 32 cases on record relate to only a few bureaux with the preponderance of cases taking place in the Canadian Centre for Foreign Policy Development (CPC) where an internal audit is underway.

Recommendation for SPD

- 3.5.2 Contracting managers should be apprised that oral commitments are prohibited and that terms and conditions of all contracts must be formulated in writing.
- 3.5.3 Managers should be made aware of disciplinary measures that can be invoked in the event that contracting regulations are not followed.

SPD Action and Time Frame

- 3.5.2 SPD will inform in writing all contracting managers that oral commitments are prohibited and that terms and conditions of all contracts must be formulated in writing. These instructions will also be added to the content of the Contracting Website.

 Time frame Due date: September 30, 2004.
- 3.5.3 As part of the same communication document, Managers will also be made aware of disciplinary measures that can be invoked in the event that contracting regulations are not followed.

 Time frame Due date: September 30, 2004.

3.6 Management Information System

- 3.6.1 The importance of having a reliable management information system for contracts was emphasized in the 1998 SIV Audit Report, the 2000 SMF Consultant's Report and the 2001 SIV Follow-up Audit Report. The 2001 Report stated, in its recommendation 4.4.11: "SMD should ensure that the specific recommendations regarding process and system enhancements raised in both the 1998 Audit Report and the 2000 SMF Consultant's Report are actioned." SMD agreed and suggested that major steps would be taken to action the recommendations and that a detailed work plan would be developed in the fall of 2001. Due to a recent re-organization, SPD is now responsible for actioning this recommendation. A full solution has yet to be implemented.
- 3.6.2 SMS believes the issue with the contracting activity report could be resolved with the current version of IMS. For this to happen, however, support from senior management and a champion driving this forward would be required. This would require a large change management effort. This could be included within the scope of the IMS upgrade project if it is considered a priority by the Department. To make this

happen, resources would have to be allocated, business processes changed, and training provided. For correct information to be captured, SMS has indicated that:

- all procurement activities would need to be recorded in IMS using the Materiel Management (MM) module;
- the current practice of using funds commitments for service contracts would need to be replaced by using Purchase Orders in the MM Module, thus ensuring all activities are recorded in MM. A review of current business processes and business re-engineering would be required;
- all buyers would need to be set up for procurement reporting. Currently, not all buyers complete the additional procurement reporting screen in IMS as these fields are not mandatory;
- training would be required for all MM users on the procurement reporting policy and on the completion of the additional procurement reporting screen; and,
- some adjustments to IMS would be required, which could be made within three months.

Recommendation for MKM

3.6.3 Seek senior management support and resourcing for mandating the use of the MM module for contracting.

MKM Action and Time Frame

3.6.3 MKM will seek senior management support and resourcing for mandating the use of the MM module for contracting.

Time frame - Due date: June 30, 2004.

3.7 Contracting at Missions

- 3.7.1 Management/Consular Officers (MCOs) at 30 missions abroad were contacted by telephone regarding contracting practices in their missions. A cross-section of missions in terms of size, location and variety of programs was chosen. Some missions included representation from other government departments (OGDs) which impacted the size and volume of contracts processed.
- 3.7.2 Of the 30 missions contacted, 25 (83%) have active CRBs, and in most cases the MCO is the Chair. In 16 (62%) cases, all contracts, regardless of amount, are

seen by the CRB, while in some missions there are different thresholds for contracts requiring CRB approval. There is a lack of consistency amongst missions on the threshold levels, which ranged from zero to \$15,000.

- 3.7.3 Only 12 (44%) of the missions liaise with their Bureau AMA or SPPG regarding contracting matters. Three missions were not aware of the intranet Web site on contracting, although 20 (67%) of the missions use the contracting tools available on-line. Three missions (10%) do not find the tools useful or effective. Twenty of the missions use the managerial checklist and insist that it accompany the contract when submitted for CRB approval.
- 3.7.4 Ten of the missions responded to the annual call for reporting the volume of contracts to SPPG. The majority of the missions indicated that they were not aware of the requirement to report. There are security contracts in 27 (90%) of the missions with the majority, 23 (85%), using the traditional competitive approach for selection. One mission uses MERX. Discussions with the missions suggest that the new departmental authorities regarding security services are being respected.
- 3.7.5 There is a lack of consistency in the handling of OGD contracts. In two missions, CIDA contracts are not reviewed by the CRB despite the fact that the contracts were in the name of the mission. MCOs are unclear regarding the missions' role with respect to CIDA contracts, and expressed the view that policy advice from Headquarters in this regard is silent.
- 3.7.6 On the whole, missions do not seek advice from SPPG regarding contracting policies and procedures. Missions need to be more aware of the services available from SPPG and SPPG needs to be more proactive in marketing its services to missions.

Recommendations for SPD

- 3.7.7 Establish roles, responsibilities, policies and practices for mission CRBs, with sufficient flexibility to accommodate the differing local contexts, to ensure consistency in the contracting process.
- 3.7.8 HQ needs to ensure that Missions understand the role of the CRB with respect to OGDs.

SPD Action and Time Frame

- 3.7.7 SPD will establish roles, responsibilities, policies and practices for mission CRBs, with sufficient flexibility to accommodate the differing local contexts, to ensure consistency in the contracting process. However, this will mirror the requirements used for the DCRB. Time frame Due date: March 31, 2005.
- 3.7.8 SPD will include the role of the CRB with respect to OGDs in its document for the benefit of the Missions.

 Time frame Due date: March 31, 2005.

Recommendation for SPPG

3.7.9 Develop a contracting orientation and information package for mission MCOs that clearly defines SPPG's relationships with mission CRBs, and highlights services available to missions.

SPPG Action and Time Frame

3.7.9 SPPG will develop a contracting orientation and information package for mission MCOs that clearly defines SPPG's relationships with mission CRBs, and highlights services available to missions. This information will be added to the content of the Contracting Web site. Time frame - Due date: March 31, 2005.

3.8 Contract Training

- 3.8.1 Courses on contracting are now being offered several times a year by the Department. In 2003, courses varied in length from two days to four days. Participants typically remarked that the three courses delivered in May 2003 were too short but that the four-day course offered in September 2003 was too long. Chairs of the CRBs also felt that the courses prepared by SPPG should include their input in the subject matter design. CRB chairs said that they possess the knowledge of the weaknesses that exist throughout the Department as they deal regularly with managers and staff who lack the requisite skills in contracting. Also, it was felt that the two-day course should have spent more time on contracting for services and less coverage of procurement of goods.
- 3.8.2 From the participants' evaluations, it is clear that courses should be conducted by a professional trainer. Overall, the contracting course content that was

developed by SPPG received high performance ratings. SPPG, with input from AMAs, should continue to be responsible for the content related to departmental contracting courses. The actual courses, however, should be delivered by professional trainers.

3.8.3 Managers and staff involved in contracting on a regular basis continue to lack the requisite training. As a minimum, staff should have some basic training in contracting rules and regulations as a pre-requisite to being either a CRB member and/or having authority to approve contracts. The audit revealed that the full membership of two CRBs had no contract training whatsoever.

Recommendation for SPPG

3.8.4 Continue to work closely with CFSM in the development of contracting courses to be delivered by professional trainers.

SPPG Action and Time Frame

3.8.4 SPPG will continue to work closely with CFSM in the development of contracting courses to be delivered by professional trainers in HQ and missions abroad with the constant presence of a Representative of SPPG in all classrooms to ensure full compliance of discussed topics with departmental policies. These training sessions will be used as a vehicle to re-inforce the advisory roles and responsibilities of SPPG that this audit is recommending to strengthen and publicize. Time frame - Due date: Ongoing.

Recommendation for SPD

3.8.5 In conjunction with SPPG and CFSM, ensure that all contracting managers, CRB members and relevant Area Managers undergo the requisite contract training.

SPD Action and Time Frame

3.8.5 SPD will, in conjunction with SPPG and CFSM, offer to all contracting managers, CRB members and relevant Area Managers to undergo the requisite contract training.

Time frame - Due date: March 31, 2005.

3.9 Departmental Processes for Contracting for Services

- 3.9.1 A sample of 50 files of contracts for services was selected for review from a cross-section of bureaux within the Department. The value of the sample, including amendments, totalled \$4.47 million awarded over the period January 2002 to March 2003. The files included 26 which were sole-sourced, 19 which employed the traditional competitive method, and five which were call-ups against a Standing Offer or Supply Arrangement. This review indicated that contracting rigour has not completely reached everyday practice and there is a need for contracting managers and CRBs to ensure files are properly documented and contracting processes are adhered to. Specifically:
- Of the 24 competitive contracts, 21 contained evidence of an evaluation process. In 17 of the cases, however, the evidence was limited to a final score summary, and to a lesser extent, was accompanied by a set of selection criteria and scoring methodology. Only eight files contained proposals (but not necessarily from all bidders). As a result of the limited selection process documentation, an assurance statement regarding the integrity of the process cannot be put forth.
- There is no consistent use of the managerial checklist and there are various forms of the checklist in use. Only 13 of the 50 files examined included a checklist. The managerial checklist developed by SPPG should be the standard and made mandatory for all selection of contractors, notwithstanding the mode of procurement.
- The managerial checklist, because of the way it is designed, is not capturing the fact that the contractor may be a former government employee. Former public servants could go unnoticed if they are with a private firm. The checklist should be reviewed and modified to capture information concerning former public servants who are contracted indirectly through the selection of a private firm.
- Obvious employer-employee relationships exist. Few, if any, would pass the CCRA's criteria for being deemed "self-employed". The Department has needed to address issues of employee benefits for contractors on an estimated 12 occasions in the past few years. There may always be cases of employer-employee relationships but it is important that managers understand the risk and be prepared to bear the costs associated with the benefits.
- Files are not well documented and could be improved through the use of a standard file check list which identifies what a typical contract file should contain.

- Information justifying the use of contractors over other forms of engagement is seldom provided. Statements of Work often resemble job descriptions as the tasks are for on-going work, not project-specific deliverables.
- There were 26 sole-source contracts examined, half of which contained no
 justification on how or why the firm came to be selected. Some contracts that
 were sole-sourced over \$25,000 were justified through the incorrect use of the
 term "pressing emergency" to qualify for not going competitive.
- Ten of the sample contracts were signed after work had started.
- Fourteen contracts, which were originally awarded under either the \$25,000 or the \$84,400 thresholds, were amended to increase their contract values above these thresholds. The majority of these amendments doubled the original contract amount, indicating a need for improved contract planning.
- Twelve of the consultants awarded contracts had been previously involved with the respective projects but under a different arrangement, i.e. a separate contract, a term position, or contracted through a different firm.
- Contractor performance is not being evaluated. Vital information needs to be retained on contractors who achieve good performance, constituting possible "best practices", or whose performance is below par, so that the Department is aware of poor performers.
- It is not widely known that GST and travel expenses are part of the contract value. Some contracts, considered to be under the \$25,000 threshold, do not qualify when GST and travel are included.

Recommendation for SPD

3.9.2 The deficiencies resulting from the audit of contracting files should be corrected. A standard file checklist should be developed for all contract files. Additional guidelines to address these deficiencies should be communicated to all staff engaged in the contracting process.

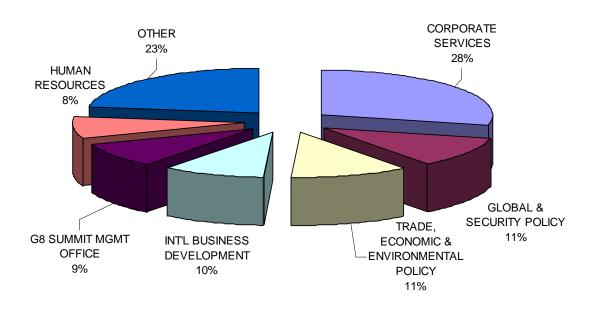
SPD Action and Time Frame

3.9.2 SPD will develop a standard file checklist to be used in all contract files. Any additional guidelines to address these deficiencies will be communicated to all staff engaged in the contracting process.

Time frame - Due date: March 31, 2005.

ANNEX 1

2002-03 CONTRACTING FOR SERVICES SPENDING BY BRANCH

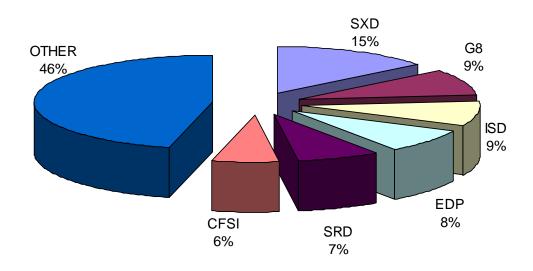


Branch	Amount	%
CORPORATE SERVICES	\$ 42,329,149	29%
GLOBAL & SECURITY POLICY	16,351,583	11%
TRADE, ECONOMIC & ENVIRONMENTAL POLICY	16,290,623	11%
INTERNATIONAL BUSINESS DEVELOPMENT	14,566,908	10%
G8 SUMMIT MANAGEMENT OFFICE	12,884,770	9%
HUMAN RESOURCES	11,565,075	8%
AMERICAS & SECURITY*	7,801,062	5%
STRATEGIC POLICY	7,787,999	5%
EUROPE*	6,113,644	4%
ASIA PACIFIC*	6,000,110	4%
AFRICA, MIDDLE EAST*	4,459,667	3%
LEGAL ADVISER	1,329,840	1%
REMAINDER	188,624	0.1%
Grand Total	\$ 147,669,054	100%

^{*}Geographic Branches include Missions

ANNEX 2

2002-03 CONTRACTING FOR SERVICES SPENDING BY BUREAU



Bureau	Amount	%
INFORMATION MANAGEMENT & TECHNOLOGY	\$ 21,454,925	15%
G8 SUMMIT MANAGEMENT OFFICE	12,884,770	9%
SECURITY & INTELLIGENCE	12,859,645	9%
EXPORT + IMPORT CONTROLS	12,375,801	8%
PHYSICAL RESOURCES	10,973,993	7%
CANADIAN FOREIGN SERVICE INSTITUTE	9,137,683	6%
CLIENT SERVICE FUND	4,757,394	3%
IBD POLICY/PLANNING	4,620,977	3%
CORPORATE FINANCIAL PLANNING & SYSTEMS	4,190,229	3%
REMAINDER	54,413,636	37%
Grand Total	\$ 147,669,053	100%

ADDENDUM

Subsequent to the initial operating management response to the audit, the following reflects actions which have been and/or will be taken by the operating management, and which have not to date been subject to audit review.

- In addition to existing automated systems for goods procurement, the
 Department expanded the systems capacity (the automated contracting system
 [ACS]) for the management of its services and construction contracts in
 December 2004.
- The Department has recently decided to enhance the control framework through the centralization of its procurement for services in the Headquarters Administration Bureau (SPD) – Centre of Expertise on Contracting for Services (SPPG).
- The DCRB's advisory role has been strengthened with the addition of the Director General of SPD (as a permanent member), and the directors general of SXD, SRD and BCD. In addition, as a result of the changes to the procurement process, the Terms of Reference for the Contract Review Boards will be revised to strengthen the roles and responsibilities of the Board members and delegated officials with contracting authority.
- SXD has reduced the number of consultants from 209 in September 2002 to 122 in August 2005, corresponding to a total reduction of 87 consultants or 42%. SXD will continue reviewing the number of consultants under contract during fiscal year 2005/2006 with the aim of further reducing this number. In addition, SXD is currently examining various approaches to strategically procure professional services in the future and will consult with the Departmental Contract Review Board before implementation.
- There has been a substantial increase in the training of management and staff involved in contracting in the last year. The Centre for Corporate Services Learning in collaboration with SPPG will provide training at missions during the current fiscal year.