

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1. INTRODUCTION.....	3
1.1 Responsibilities for Contracting.....	5
1.2 Audit Objectives and Scope	7
1.3 Methodology	8
2. DETAILED AUDIT FINDINGS	11
2.1 Management Framework for Contracting—Purpose	11
2.2 Management Framework for Contracting—Commitment.....	14
2.3 Management Framework for Contracting—Capability	25
2.4 Management Framework for Contracting—Monitoring and Learning.....	28
3. CONCLUSION	31
4. RECOMMENDATIONS AND MANAGEMENT RESPONSE.....	33
APPENDIX: THE COCO CRITERIA	39

EXECUTIVE SUMMARY

An audit of the Department of Justice's contracting practices and processes was undertaken in accordance with the Department's Internal Audit Plan. This report provides senior management with an assessment of the departmental contracting process and includes recommendations for improvement. The fieldwork for the audit was conducted primarily during the period September 2001 to December 2001, and examined service contracts let by the Department in the calendar years 1999 and 2000.

The audit noted a number of areas where the management framework for contracting requires strengthening. In particular, the Department's *Contracting for Services Manual* does not provide appropriately balanced guidance concerning non-competitive contracting. The audit team recommends that the departmental manual be revised and that it be complemented by a succinct Manager's Guide to the Contracting Process and a training session for managers with delegated authority for contracting.

The Contract Review Committee (CRC), which was established in 1983, is mandated to establish and maintain a formal challenge mechanism for all contractual authority requests for consulting and professional service requirements. The audit found that, as it operated in 1999 and 2000, the CRC was unable to effectively discharge its mandate. As a result, the current CRC is considering a revision to its mandate that would expand its role in some areas while decreasing it in others. Consideration is also being given to implementing a decentralized control framework. The audit recognizes that under modern comptrollership there can be a benefit in decentralizing control responsibilities for contracting to both sectors and regional offices.

A sample of contracts from various responsibility centres in the Department was reviewed. The audit found lapses in compliance with departmental and Treasury Board Secretariat (TBS) *Contracting Policies*, particularly with respect to contracts awarded on a non-competitive basis. Questionable practices were also observed that included incomplete documentation, contracts without defined deliverables, repeated amendments, and patterns of contracting that risked

establishing employer-employee relationships. Several recommendations are made to improve the Department's ability to fulfill the requirements of its own and the TBS policies.

Finally, the audit assessed the Department's ability to monitor its contracting processes and activities, and to use the results to identify shortcomings and establish interventions or learning opportunities to address areas of need. Recommendations are made that will improve the Department's monitoring function as well as provide feedback to senior management concerning the strength of the management framework for contracting throughout the Department.

The management response to the recommendations contained in this report was provided by the Acting Director, Contracts and Materiel Management, on October 15, 2003.

1. INTRODUCTION

As with every other federal government department and agency, a wide range of legislation, multilateral agreements, government regulations and policies govern how the Department of Justice must contract for goods and services. These include the *Financial Administration Act*, the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT), the *World Trade Organization Agreement on Government Procurement* (WTO-AGP), Canada's *Government Contracts Regulations*, and the Treasury Board Secretariat (TBS) *Contracting Policy*. Additionally, the Department of Justice has developed its own internal *Contracting for Services Manual*.

Over the years there has been ongoing interest in and scrutiny of government contracting practices by parliamentarians, the TBS, the Office of the Auditor General and the public at large. TBS *Contracting Policy* requires that contracting "be conducted in a manner that will stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds."¹ In light of the increasingly complex legal and policy framework within which contracting must be carried out, this policy presents an ongoing challenge for government departments and agencies.

The Department of Justice enters into a significant number of service contracts each year. Tables 1 and 2 summarize by sector and by contract value the level of contracting for services undertaken by the Department during calendar years 1999 and 2000.²

¹ TBS *Contracting Policy*, Section 2, Policy Statement. See www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_1_e.html#top.

² Some of the column totals in Tables 1 and 2 are out by a small amount due to rounding of figures.

Table 1: Departmental Service Contracts by Sector—1999, 2000*

Sector	1999		2000	
	Number of Contracts	Original Value (\$)	Number of Contracts	Original Value (\$)
Minister's Office	7	245,890	11	248,149
Deputy Minister's Office	2	11,524	6	74,386
Integration	44	315,600	99	599,247
Policy Sector	519	8,984,326	603	9,651,727
Canadian Firearms Centre	217	2,722,597	305	4,189,791
Legislative Services Branch	32	282,155	59	617,857
Communications Branch	24	303,846	59	737,528
Legal Operations Sector	182	1,819,677	272	4,334,723
Civil Law and Corporate Management Sector	199	3,997,858	337	4,954,945
Regions	374	1,754,514	540	1,911,766
Total	1600	20,437,987	2291	27,320,119

* The sectors shown in Table 1 reflect the organizational structure in place during 1999 and 2000. Regional operations that organizationally fell under the Legal Operations Sector and Civil Law and Corporate Management Sector are shown separately.

Table 2: Departmental Service Contracts by Contract Value—1999, 2000

Contract Value	1999		2000	
	Number of Contracts	Original Value (\$)	Number of Contracts	Original Value (\$)
Under \$5000	821	1,330,294	1180	1,833,826
\$5000 to \$10,000	210	1,473,944	313	2,218,374
\$10,000 to \$15,000	170	2,060,670	203	2,464,446
\$15,000 to \$20,000	93	1,611,306	149	2,561,770
\$20,000 to \$25,000**	197	4,587,060	296	6,989,803
Subtotal	1,491	11,063,274	2,141	16,068,219
\$25,000 to \$50,000	73	2,206,822	86	2,573,376
\$50,000 to \$80,000	21	1,303,004	27	1,686,112
\$80,000 to \$150,000	7	682,876	17	1,711,665
Over \$150,000	8	5,182,009	20	5,280,744
Total	1600	20,437,985	2291	27,320,116

**Contracts valued at less than \$25,000 are awarded generally by delegated Responsibility Centre Managers.

The Department of Justice uses approved methods of awarding contracts as outlined by the *Government Contracts Regulations*. These include:

- the traditional competitive contracting approach, often referred to in this audit, is a process in which at least three firms are directly invited to submit proposals to the Department, and the successful supplier is chosen from the firms invited to bid;
- another competitive approach for contracts over \$25,000 requires that departments post a request for proposal on MERX, an open bidding service, and select a successful supplier from the firms that respond to the posting;
- an Advance Contract Award Notice (ACAN) can be posted on MERX, which constitutes making a public announcement of the intention to award a contract to a particular supplier, and invites firms that believe they also qualify for the proposed contract to submit a challenge. If no successful challenge is made, the contract is awarded as per the original intention. The process is deemed to have met the requirements for competition and may therefore be regarded as a competitively-awarded contract;
- the non-competitive approach which results in the awarding of a contract, without conducting a competitive process, to a known individual or firm that is considered capable of undertaking the required work.

This audit focuses on the management framework in place within the Department of Justice to ensure the effectiveness of its processes for service contracting and compliance with applicable legislation and policies.

1.1 Responsibilities for Contracting

Within Corporate Services of the Civil Law and Corporate Management Sector, the Contracting and Materiel Management (CMM) unit has functional responsibility for contracting services within the Department of Justice. The CMM is responsible for the Department's contracting policy, maintaining its *Contracting for Services Manual*, and providing advice and guidance to responsibility centre managers. It also processes all service contracts that have an original estimated value of more than \$25,000, except for those contracts let by the Canadian Firearm Centre (the Centre). The Centre has Public Works and Government Services Canada (PWGSC) personnel assigned to it and working on its premises who assist with service contracts valued at more than \$25,000. The Centre also has a central administrative unit that processes all contracts that are within its managers' delegated authority. Both the PWGSC personnel and the central

administrative unit were established to support the high volume of contracting expected by the Centre, which was itself created so that a legislated deadline could be met.

Delegation of authority to process services contracts without the CMM's involvement varies with management level:

- Directors in all sectors of the Department have delegated authority to process service contracts up to a \$25,000 limit (including GST),
- Directors General have delegated authority to process service contracts up to a \$50,000 limit (including GST),
- Assistant Deputy Ministers may process service contracts up to a \$100,000 limit (including GST).

Typically, the CMM is not involved in these contracts except to occasionally provide information and advice.

As the government-wide contracting authority, PWGSC becomes involved in the contracting process only when a proposed contract exceeds the Department's delegated authority. The Department has delegated authority for contracts that are:

- \$2,000,000 in original value plus \$1,000,000 in amendments and are let through MERX,
- \$400,000 in original value plus \$200,000 in amendments and are let according to a competitive process,
- \$100,000 in original value plus \$50,000 in amendments and are let as non-competitive contracts.

As required by the TBS *Contracting Policy*, the Department of Justice has a Contracts Review Committee (CRC), which was formed in 1983. Its mandate, as set out in the Department's *Contracting for Services Manual* and as approved by the Operations Committee on May 19, 1999, is to "establish and maintain a formal challenge mechanism for all contractual authority requests for consulting and professional services requirements, including those within departmental authority, those sent to Public Works and Government Services Canada and those submitted to the Treasury Board." Its stated objectives are "to ensure that service contracting activities are in compliance with contracting policies and to ensure an acceptable level of competitive contracting."

The Department's *Contracting for Services Manual* does not provide direction concerning the composition of the CRC or its reporting relationship to other departmental committees; it simply lists the members as they were at the time of the manual's publication. In practice, the chair of the Committee is the Director General of Finance, Administration and Programs (or this position's equivalent), and its secretary is the Director of Administration and Security (at the time of this audit this position was vacant, and the manager of CMM is acting as the secretary). An attempt is made to include representation from all sectors of the Department where there is significant contracting activity, but there are no policy requirements concerning sectoral participation.

Departmental policy documents for contracting are issued on behalf of the Deputy Minister after being reviewed and approved by the departmental Executive Council.

1.2 Audit Objectives and Scope

The overall objective of this audit was to review and assess the management framework in place for contracting for services within the Department of Justice during calendar years 1999 and 2000. The audit fieldwork primarily occurred from September to December 2001. While the focus of the audit is on the fiscal years 1999 and 2000, occasional observations of current departmental contracting practices are offered.

The audit examined the operations and activities of CMM as well as contracts issued by other departmental sectors located in the Department's national headquarters in the calendar years 1999 and 2000. Its scope did *not* include review of contracts issued by regional offices that were under \$25,000, contracts issued by the Information Management Branch that were under \$25,000, and contracts for the provision of legal services stemming from appointment as an agent of the Attorney General or the Minister of Justice.

The specific objectives of this audit were to review and assess:

- the effectiveness of the Department's contracting policy and the CRC;
- the extent of compliance with *Government Contracts Regulations*, and TBS and departmental policies;
- the extent to which non-competitive contracts are managed with rigour;
- the appropriateness of performance monitoring reports and the extent to which these are used for management decision making;

- the appropriateness of interfaces with departmental staff and the CRC;
- the application of contracting policy in each sector of the Department of Justice's headquarters.

1.3 Methodology

The Department of Justice's contracting framework was compared against the Canadian Institute of Chartered Accountants' Criteria of Control (CoCo).³ CoCo's standard management framework model has four key elements:

- Purpose—encompassing departmental objectives for contracting, policies that support these objectives, and the management of associated risks;
- Commitment—encompassing factors influencing commitment such as established authority, responsibility, and accountability;
- Organizational capabilities and resources—addressing the necessary knowledge, skills, and tools an organization needs to support the achievement of its objectives;
- Monitoring and learning—identifying the mechanisms needed within an organization to monitor how well the management framework is working and identifying a process for taking corrective action if required.

A more detailed outline of these elements is provided in the Appendix.

Information was obtained through the following methods:

- interviews with CMM staff;
- interviews with the members of the CRC;
- a review of TBS *Contracting Policy, Government Contracts Regulations*, and the Department's *Contracting for Services Manual*;
- statistical analyses of all service contracts let by the Department in 1999 and 2000;
- a detailed file review, using standardized checklists, of 50 individual contracts, including contracts held in CMM's files and contracts kept by the sector that let the contract;
- a review of an additional 86 contracts let to firms that had received five or more contracts from the Department in 1999 and 2000;

³ Criteria of Control Board, *Guidance on Control*, Canadian Institute of Chartered Accountants, November 1995.

- follow-up interviews, as required, with managers who had let the contracts that were examined in the file reviews.

In addition, a survey, using face-to-face key informant interviews, was undertaken of the services contracting practices of a sample of other government departments (Industry Canada, Health Canada, Fisheries and Oceans Canada, Public Works and Government Services Canada, Treasury Board Secretariat). The survey addressed:

- the processes in place for awarding non-competitive service contracts, i.e., level of approval required, extent of external challenge function; and,
- each department's Contracts Review Committee, its mandate, function and operating processes.

The contracts examined in the detailed file review were randomly selected using a dollar unit approach. The files were selected from a sub-sample of all records that included only those contracts:

- where there was a contract amendment valued at \$10,000 or more,
- that were non-competitive contracts valued at \$25,000 or more,
- that were traditional competitive contracts valued at \$25,000 or more.

2. DETAILED AUDIT FINDINGS

2.1 Management Framework for Contracting—Purpose

In this section, specific audit objectives were examined within the context of the CoCo framework criteria for understanding an organization's purpose. The criteria outline necessary premises for achieving objectives. In particular, this section presents findings on policies, mechanisms and plans (e.g. training) that are in place to help departmental staff understand what is expected of them and that provide guidance regarding the scope of their responsibility to act.

Guiding Policy

The Department has a very detailed *Contracting for Services Manual* to assist management and staff in carrying out their responsibilities associated with the contracting process. The manual, which was updated in 1999 in response to recommendations from a 1997 audit, integrates the TBS *Contracting Policy*, the *Government Contracts Regulations*, various trade agreements (e.g. NAFTA, AIT, WTO-AGP), land claims agreements and Aboriginal set-asides.⁴ As such, it is an excellent desk reference for procurement and contracting professionals, who, by virtue of their continuous involvement in the discipline, probably need to consult it only occasionally. However, its size and volume of detail reduces its value as a practical guide or source of information and direction for departmental staff with less frequent requirements to let contracts. As noted already, such staff includes directors and other senior managers in all sectors of the Department who have delegated authority to process service contracts under a \$25,000 limit without the CMM's involvement.

The audit found that the manual does not provide an adequate context for non-competitive contracting when compared to the TBS *Contracting Policy* and *Government Contracts Regulations*. TBS policy, paragraph 10.1.1, notes, "As required by Section 5 of the *Government*

⁴ As a result of the TBS Aboriginal Business Procurement Policy and Incentives (contracting Policy Notice #1996-2), particular procurements are limited to only Aboriginal suppliers.

Contracts Regulations, the contracting authority is to solicit bids before any contract is entered into. The competitive approach in determining a contractor should therefore be the norm.” In comparison, the Department of Justice’s manual states, “Bearing in mind it is always preferred that more than one supplier be considered when awarding any government contract because of fairness and openness, it is acceptable practice, however, in [the Department of Justice] to award a contract on a non-competitive basis provided it is under \$25,000, GST included.” This statement is made without any of the qualifiers that are both prominent and near to the text in the TBS policy that describes the \$25,000 limit.

Further, TBS *Contracting Policy* states, in paragraph 10.2.1, “Section 6 of the *Government Contracts Regulations* contains four exceptions that permit the contracting authority to set aside the requirement to solicit bids.” It then goes on to list the exemptions, one of them being that the estimated expenditure does not exceed \$25,000. In the next paragraph, however, the policy states “Exception (b) sets specific dollar limits below which a contracting authority may set aside the competitive process. However, contracting authorities are expected to call for bids whenever it is cost effective to do so.” It is also stated in the TBS policy that, “Even if a proposed directed contract . . . for goods and services qualifies under one of these four exceptions, the contracting authority is encouraged, whenever possible, to use the electronic bidding methodology to advertise the proposed award through an Advance Contract Award Notice (ACAN).”

In the absence of the full context found in the TBS *Contracting Policy*, the Department’s contracting manual could lead people to conclude that non-competitive contracting is the departmental norm for all contracts that are for less than \$25,000. In fact, for the calendar year 2000, this audit found that over 80 percent of all departmental contracts for services valued at less than \$25,000 were non-competitive contracts. Of the remaining 20 percent, all except four were let as traditional competitive contracts. The individuals interviewed in the course of this audit (as a follow-up of review of sample files) all believed that a contract value of less than \$25,000 was, in itself, sufficient justification for non-competitive contracting.

Available Training

For most of 1999 and 2000, the CMM had only one full-time indeterminate employee: both its manager and the Director of Administration and Security were on secondment, and a junior term employee was on leave for a significant period of time. As a result, no training was provided to responsibility centre managers with delegated authority for contracting, and the remaining program officer was hard pressed to provide even telephone advice to departmental staff who wanted to contract for services under their own delegated authority. This topic of available

training will be discussed in more detail in the section entitled, “Management Framework for Contracting—Capability.”

Recommendations and Management Response

1. It is recommended that the Director General, Finance, Administration and Programs develop a framework that will assist managers to better understand and implement the contracting process. The framework should include:

- a) revisions to the Department’s *Contracting for Services Manual* to provide a more balanced presentation of the factors governing the awarding of non-competitive contracts in the Department;**
 - b) the development of a succinct Manager’s Guide to the Contracting Process that clearly outlines the authorities of managers and the steps to be followed by managers with delegated authority for contracting;**
 - c) the development of a training session to complement the Manager’s Guide to the Contracting Process, that is made available to all managers with delegated authority for contracting.**
-
- a) To keep the number of reference documents to a manageable number, with respect to updates and consistency from one to the other, the Manual will be replaced with the Manager's Guide [see recommendation b) below].
 - b) Agree. A Manager's Guide will be created and will include a new and detailed Delegation of Financial Signing Authorities Chart and its Supporting Notes, the current chapters on Contracting Principles found in the training manual, pertinent chapters from the existing Contracting for Services Manual, the Contract Initiation Document and the Request for Proposals templates which provide the necessary contract preparation steps to be followed by managers with delegated authority.
 - c) Agree. A two-day training session has been developed and presented to approximately 135 assistants and some managers in the Regions (Atlantic, Québec, Prairies, Pacific) and at HQ. Shorter ½-day and 1-day sessions are also available and have been presented in some regions to meet managers' needs.

2.2 Management Framework for Contracting—Commitment

In this section, audit objectives were examined within the context of the CoCo framework criteria for understanding an organization's commitment to maintaining the integrity of the contracting process. Specifically, the audit focussed on departmental documentation; adherence to regulated and consistent processes; and departmental authority, responsibility, and accountability.

The Department's delegation of contracting authority (for contracts less than \$25,000) to director-level managers serves to expedite the contracting process by reducing the possibility of bottlenecks associated with high-volume, relatively low-dollar-value service contracts. However, such delegation assumes that there will be sufficient expertise within a sector or branch to ensure the ongoing integrity of the contracting process. The interviews and file review showed that there are significant gaps throughout the departmental headquarters with respect to the knowledge of and adherence to government contracting requirements.

Consistency and Documentation

Maintaining good records may seem like a relatively minor administrative activity, but in the contracting process it is vital to the ability to reconstruct the process after the fact and to provide assurance that its integrity was upheld.

Departmental policy requires that a Contract Planning and Approval Document (CPAD) be completed for every non-competitive contract issued within a manager's delegated authority. The CPAD provides a checklist that, if followed, helps a manager ensure that all required provisions of the contracting process have been met. During our file review, the audit team did not find any instances of the use of the CPAD. The Canadian Firearms Centre, however, had designed and was using a form similar to the CPAD.

With or without a CPAD-like form, the auditors observed practices across the department in its file⁵ review that were inconsistent with TBS *Contracting Policy*. Common practices included⁶:

⁵ There are many files that can comprise a contracting file: the Project file which is usually held by the Project Officer and includes progress and final reports and other deliverables; the Administrative file which is held by the administrative staff and includes contracts and copies of invoices, the CMM Contracting file if applicable; and the Financial file which is held in Accounts Payable and includes the original invoices signed under Section 34 of the Financial Administration Act. All of these are official records. The audit team with the assistance of CMM asked responsibility centres to provide their complete file for the sampled contracts. The observations identified in this report include the information found in the files that the responsibility centres provided.

- ***A lack of justification for issuing a non-competitive contract*** to a specific supplier and/or, for the proposed price. Over 70% of the time, there was no justification on file for non-competitive contracting and the rationale for selecting a particular contractor. Over 90% of the files did not include a justification for the proposed price. Even the Canadian Firearms Centre, which had files with better-quality documentation, did not require managers who awarded non-competitive contracts to document the justification for awarding the contract without competition. The understanding of the Centre’s contracting unit was that issuing non-competitive contracts valued at less than \$25,000 was acceptable practice provided the manager had the delegated authority to do so. It therefore saw its responsibility as limited to verifying that the contract was within the manager’s delegated authority. TBS *Contracting Policy* article 10.2.6 requires that when a non-competitive process is utilized because the estimated value of the contract is less than \$25,000, the reason for not using a competitive process should be fully justified on the contract file. The audit team is of the view that this would include a justification for the proposed price. Good practice would result in this process being applied to all non-competitive contracts and not just those valued at less than \$25,000.. Such information could also serve to address issues raised in the auditors’ findings in the next section, “Awarding Contracts.”
- ***Only requiring a proposal from the contractor when a traditional competitive process was utilized or the Request for Proposal was posted on MERX.*** This applies to most areas except Civil Law and Corporate Management Sector where requiring a proposal irrespective of the contracting process utilized was the norm. Since the contractor’s proposal is usually more detailed than the Statement of Work attached to a contract, it serves to provide a clearer understanding of exactly what services will be provided when and by whom. Potential differences of opinion can be dealt with before a contract is drawn up.
- ***Not including on file résumés of the individuals carrying out the work.*** There were résumés present on approximately 20% of the files examined. Résumés were not found on any of the files from the Canadian Firearms Centre and were found about 10% of the time on files from the Civil Law and Corporate Management Sector, and 40% to 50% of the time on the files of the other two major Sectors examined. This information is required, especially in non-competitive contracting situations, to demonstrate that the contractors are qualified for the work they have been hired to carry out. The information also assists managers in demonstrating that they have exercised due diligence in the contracting process.

⁶ The size of the sample was such that general comments can only be made about the contracting practices within the Policy Sector, Canadian Firearms Centre, Legal Operations Sector, and the Civil Law and Corporate Management Sector. The sample size was insufficient to support specific comments about any of the other Sectors/Branches examined during this audit.

- ***Not including evidence that the security requirements of the work had been satisfied.*** None of the files from the Policy Sector and only one from Legal Operations included this information. All except one file each from the Canadian Firearms Centre and Civil Law and Corporate Management had the required information on file. The TBS *Contracting Policy* (paragraph 4.2.10 and 11.3) requires that the provisions of the government's *Security Policy* be applied equally to procurement contracts as it is to internal operations. As contractors can have access to protected Department of Justice information in the course of their work, it is important that there be evidence readily available that demonstrates that the security requirements of the work have been explicitly considered.
- ***Rarely including copies of interim reports or deliverables from the contract on file.*** Only the Canadian Firearms Centre included this information, but in most cases it consisted solely of time sheets as there was no other clear deliverable in the contract. Without such evidence on file, it is not clear that the services as set out in the contract have in fact been provided.
- ***Not consistently including on file a written note,*** signed and dated by the Project Manager ***to indicate the receipt and acceptance of any and all contract deliverables*** and a copy of all the invoices, or if not there, an indication of where these documents are kept. Only the Canadian Firearms Centre consistently included this information on the contract files. Without such evidence on file, it is not clear that the services as set out in the contract have in fact been provided.

Only one instance was found at the conclusion of a contract where there was evidence of contractor evaluation on file. It was also noted that none of the contracts for services of an individual written by the Policy Sector included clear provisions to avoid the creation of employer/employee relationships. All of these contracts were with an individual or a sole proprietorship.

The audit team is of the opinion that the expertise and resources found in the CMM and the Canadian Firearm Centre's central administration unit accounted for better documentation practices in these units. In contrast, the contracting files in the other Sectors were not as well maintained. This points to the importance of ensuring that expertise and resources are available in all sectors in order to support the ongoing integrity of the contracting process across the Department of Justice. Ideally, if each sector were to have a central administrative unit similar to that of the Canadian Firearm Centre, then improved practices in contracting processes would be extended across the Department. The audit team realizes that such an idea requires significant additional resources, but is of the view that long-term benefits would result from the creation of such units in each sector. At the very least, Departmental Sector Heads need to inform their managers of the importance of maintaining appropriate documentation on contracting files.

Recommendations and Management Response

- 2. It is recommended that the Director General, Finance, Administration, and Programs, prepare a letter for the signature of the Deputy Minister to all Responsibility Centre Managers with delegated authority, stressing the need to maintain adequate documentation on contracting files and stating that the use of the CPAD for all contracting activities would facilitate this task.**

Agree. A new Contract Initiation Document has been developed to replace the current CPAD and will be required on all contracting files. It is gradually being introduced at contract training sessions.

Awarding Contracts

Inconsistencies in observed practices as compared to government policy were not confined to lapses in documentation. Contracts reviewed by the audit team that were awarded on a non-competitive basis had characteristics that were inconsistent with a rigorous adherence to the intent of the Government's contracting policies.

Within the audit sample, more than 30% of all contracts examined were for days of service rather than specific work products or defined deliverables. This was most prevalent within the Canadian Firearms Centre, the Civil Law and Corporate Management Sector, and the Policy Sector. It was also observed, however, within Legal Operations, Communications, Legislative Services and Integration. In several cases, the days of service per contract exceeded 200, and contracts approaching 100 days of service were not uncommon. Article 4.2.18 of TBS *Contracting Policy* states that, "Contracts for the services of individuals, including temporary help, are to be limited to a duration of not more than 20 weeks." The purpose of this time limit is to minimize the potential for establishing an employer-employee relationship. Auditors found that approximately 25% of the contracts in its initial sample had a number of days that matched exactly or exceeded the number of working days in the period of the contract, and/or situations in which contractors were paid bi-weekly on the basis of a five-day work week and for travelling. In some instances, the statements of the work to be done were cast in terms of duties to be performed. These are precisely the indicators that the Canada Customs and Revenue Agency uses to establish that an employer-employee relationship exists or existed.

Other observed practices within the sample examined included:

- the frequent use of contract amendments, particularly for contracts that were issued on a non-competitive basis at entry values just below the \$25,000 threshold. Some of these contracts were amended up to four times;
- unusual patterns of contracting, including:
 - issuing back-to-back directed contracts to the same supplier for clearly related work products (again, at entry values just below the \$25,000 threshold);
 - issuing a series of concurrent contracts with obviously complementary components (e.g., travel expenses and travel time in one contract and provision of professional services at an out-of-town location in another).

When the audit team raised questions about these practices, it was explained that either such practices occurred during very busy periods when deadlines had to be met, or that it was very difficult to fully foresee the scope of work that the contractor would eventually perform. Another reason given was that once a particular contractor starts work and the scope becomes clearer, it can be inefficient and ineffective not to keep the same individual under contract. In any event, all the contracts examined had been duly authorized, either by managers with the delegated authority to do so, or by on occasion, the CRC. As a result, not only were these practices viewed as justifiable, but also few regarded them as inappropriate.

The results of a statistical analysis of all contracts for calendar year 2000 were consistent with the results of the detailed file review. The audit found that the Canadian Firearms Centre and Civil Law and Corporate Management, in particular, had a very significant number of contracts valued between \$20,000 and \$25,000 (33.8% and 18.7% respectively of all contracts issued by the Sectors during 2000). There was also a large number of contracts with this initial dollar value in comparison with the number with an initial value of \$15,000 to \$20,000 (an increase of over 800% in the case of the Canadian Firearms Centre and over 100% for Civil Law and Corporate Management⁷). A significant number of the contracts were amended upwards, in particular within the Canadian Firearms Centre where more than 43% of the contracts were amended to increase the dollar value. Approximately 10% of the Canadian Firearms Centre's contracts within this range had contract amendments exceeding \$50,000. Within Civil Law and Corporate Management, approximately 17% of all contracts issued with an original value between \$20,000 and \$25,000 were amended to increase the value. In only one instance was the contract value more than doubled.

⁷ The other Sectors with a significant amount of contracting also had increases in the number of contracts between \$20-25K in comparison to the number between \$15-20K. There was an increase of 31.7% in the Policy Sector and 25% in Legal Operations.

The Canadian Firearms Centre used non-competitive contracting almost exclusively (98.7% of their contracts during 2000 were awarded on a non-competitive basis). Most other Sectors were much closer to the Departmental average for non-competitive contracts. The Regions had a high level of non-competitive contracting, but this reflected the low dollar value of most of their procurements. Over 85% were valued at \$5,000 or less. The Communications Branch had a very low level of non-competitive contracting (39%) as a result of an extensive use of traditional competitive contracting practices.

While the language in the departmental contracting manual and the lack of training provided to departmental staff on contracting practices no doubt contributed to the observed practices, there was also no effective challenge mechanism in place for contracts valued at less than \$25,000. This finding will be discussed in greater detail in the next section, “The Role of the Contracts Review Committee.” It is useful, however, to note the practices in other government departments which have much more effective challenge functions.

The audit team’s survey of five other Government of Canada departments showed that all of them had some form of independent review of non-competitive contracts, either by performing spot checks on a sample of files after contracts have been awarded, or by having each proposed contract inspected before it is let.

Where spot checks are used, their scope varies with the resources available to the Contracts and Material Management function (or its equivalent). Some departments perform spot checks on contracts from all organizational units every year. Others target their sampling to known “problem areas”. Spot checks may be supplemented by formal audits if there is evidence of inappropriate or questionable practices.

Departments that subject all non-competitive contracts valued at less than \$25,000 to an independent review use either their Contracts and Material Management unit to do this by requiring that the contracts pass through the unit prior to their being let, or submit them to an independent Contracts Review function (committees ranged in size from one person to nine people). One department had such a function in every branch and region so that the volume to be reviewed would not be overwhelming.

Like the Department of Justice, all other departments surveyed have fixed dollar thresholds below which a manager may award a non-competitive contract. Unlike the Department of Justice, however, in most departments these thresholds do not vary with the seniority of the

manager (i.e., an assistant deputy minister has no greater delegated authority to approve a non-competitive contract than a director). In all these cases, the threshold stipulates that the entry value of the contract must be less than \$25,000.

Within this limit, several departments have two formats for contracts:

- a “short form” contract that a manager may use if the required expenditure will be less than \$10,000. This consists of a standard requisition to which a simple statement of work is to be attached. Amendments to short form contracts are not permitted;
- a “standard” contract for estimated expenditures between \$10,001 and \$24,999. Amendments, usually to a maximum total value of \$50,000 including amendments, are permitted.

The departments surveyed indicated that they believed that such practices are vital to both ensuring the integrity of the contracting process and adequately protecting the interests of the Crown in cases where there might be a dispute concerning whether the work contracted for has been performed satisfactorily.

Recommendations and Management Response

- 3. It is recommended that the Director General, Finance, Administration and Programs, bring forward an updated departmental contracting framework to the Executive Council for its approval. The framework should:**
 - a) clearly enunciate the roles and responsibilities of all parties involved in the contracting process (CMM, CRC, Sectors and Regional Offices) with a view to increasing accountability for the contracting process at all levels;**
 - b) ensure that formal challenge mechanisms (centralized and/or decentralized) exist to maintain the integrity of the contracting process;**
 - c) to the extent practicable, encourage all parties involved in the contracting process to adopt contract review practices that are similar to those in place in other government departments, by requiring that the following be subject to a mandatory review:**
 - **all proposed non-competitive contracts valued at greater than for example, \$10,000;**
 - **all proposed non-competitive contracts with an amendment valued at equal to or greater than its entry value;**

- **all proposed non-competitive contracts requiring more than one amendment.**
- a) Agree. Roles and Responsibilities will clearly be defined in the new Delegation of Financial Signing Authorities Chart, its Supporting Notes and accompanying Table of Equivalents. These new financial delegation instruments have undergone an extensive review process by the Regions and various HQ stakeholders (for example, the Contracts Review Committee, Corporate Counsel, Internal Audit, Business and Financial Managers and Senior Management). It is currently being reviewed at the DM level. Proposed revisions to the delegation of authorities, include a reduced Amendment Authority from \$25K to \$10K, as well as restricted Contract Performance Authority to RC Managers (rather than to project leaders or administrative staff), etc.
 - b) Agree. CMM will begin to work with some regions and sectors to develop a model "decentralized control function". A request will be sent to Direct Reports asking them to identify and appoint managers who will be responsible for this function within their sectors. It is anticipated this call letter will be sent out by early December.
 - c) Partially agree. Roles and responsibilities, including issues mentioned above in the Recommendation (3 bullets) will be factored in and considered. Once the decentralized control function has been established, it is anticipated that full implementation in the regions and within sectors should be completed by mid 2004.
- 4. It is recommended that the Director General, Finance, Administration and Programs, consider including in the updated policy a “short form”, not-to-be-amended services contract for expenditures of less than \$10,000 (including GST), and ensure that training is available to all managers concerning the use of this contract.**

Agree. This is currently being developed. Maximum value of such contracts has been discussed at Contract Advisory Committee. It was agreed that \$10K would be the maximum value for these contracts.

The Role of the Contracts Review Committee (CRC)

The CRC, with its mandate to establish and maintain a formal challenge mechanism, is an important element in upholding the integrity of the contracting process within the Department. This committee met three times in 1999 and only once in 2000. The new staff in CMM and the Director General of Finance, Administration and Programs are planning to reactivate the CRC.

The audit team was informed that there were many new members to the CRC committee, and that some members were new to the Department. As well, scheduling and workload constraints (particularly since September 11, 2001) have limited the ability to convene meetings. Two meetings had been held by the end of 2001.

Throughout 1999 and 2000, the CRC, as an entity, did not directly interface with departmental staff. A secretarial review process was used whereby contracts (with accompanying documentation) requiring CRC approval were circulated among committee members for review, followed by individual sign-off. The single full-time officer in CMM assembled the required documentation, and once all CRC members had signed off, the contract was approved. The use of this process enabled the CRC to complete its work by meeting only three times in 1999 and once in 2000.

Members who sat on the CRC in 1999 and 2000 and prospective committee members for 2001 raised questions concerning the CRC's effectiveness as a challenge mechanism. Individuals who joined the CRC found that it did not function as they expected based on their review of its mandate and objectives. For example, the CRC did not require managers to appear before it to present rationale for directing or amending contracts that exceeded their delegated authority. Nor did the CRC collectively scrutinize the presenting manager's written rationale. Indeed, when the committee did meet, there was very little discussion of the proposed contracts placed before it.

Members of the CRC, most of whom had no background in contracting policy or regulations at either the government-wide or departmental level, received no orientation or training to prepare them for membership on the committee. Those who took the time to familiarize themselves with contracting policy and regulations found this information to be of little relevance to the actual operations of the committee, thereby causing members to question the committee's role.

At the first, informal meeting of the "new" CRC in July, 2001, the minutes record that the "original mandate to review contracts prior to award no longer served a valued purpose as the committee was being called upon to rubber stamp contracts already considered a *fait accompli*, and to provide approval of cases which stretched regulations and policies." The CRC decided to review its mandate, considering the exploration of such alternatives as:

- having the committee serve as an advisory forum,
- ensuring that sectoral contract monitoring takes place,
- reviewing statistics and trends.

Consideration is also being given to changing the name of the committee to the Contracting Advisory Committee.

It is encouraging to see that the new CRC is contemplating an expansion of its role in an attempt to better serve the Department. However, the audit team does not support any change to its mandate that would entail abandoning its challenge function. Such a change would be contrary to the requirements of TBS *Contracting Policy*. Rather, the audit team finds that the committee's challenge function requires strengthening.

Indeed, the audit team's survey of other government departments showed that challenge functions that are much stronger than those in place at the Department of Justice in 1999 and 2000 are typical. As noted earlier, all departments surveyed performed some form of independent review of non-competitive contracts, either by using after-the-fact spot checks or pre-approval reviews. Whether or not such reviews are performed by a formal contracts review committee was dependent on the strength of other controls in place for contracting. For example, some of the departments surveyed do not have formal contracts review committees. This is consistent with the Treasury Board Secretariat's *Contracting Policy (paragraph 11.1.1)*, which recognizes that the mechanism utilized will depend on the departmental organization and magnitude of contracting. The audit team was further advised by the TBS Procurement and Project Management Policy Directorate that each departments' practices should be reflective of their levels of contracting activity, the risks associated with the contracts they let, and the controls in place to ensure the integrity of the contracting process.

In practical terms, this means that departments must either have a formal committee or sound and effective control procedures. We found that the departments that do not have committees have stringent controls on non-competitive contracting. In several departments, awarding a non-competitive contract with a value greater than \$25,000 is prohibited except under very exceptional circumstances (e.g., service to address a true emergency, such as a fire or other catastrophe). In such departments, the perspective is that strong controls that ensure that all contracts above \$25,000 are awarded on a competitive basis makes a contracts review committee redundant.

The audit team also found that departments with formal committees staff them with senior managers. In one case, the committee is an ADM-level body that meets every two weeks. All committees are empowered to reject requests to let non-competitive contracts valued above \$25,000. In addition to sending the contracts back for rework because there is insufficient information to make a decision, committee decision options include:

- requiring that the contract be let using a traditional competitive process;
- requiring that it be let using an ACAN.

Committee meetings to review requests to let non-competitive contracts above \$25,000 are formal. Presentations by the manager wanting to let the contract must be made (by teleconference, if necessary) using a prescribed set of templates. Close questioning of the manager by committee members makes this a daunting experience, one that most managers are said to prefer to avoid. Such requirements serve to establish the committee's formal challenge function and meet TBS policy requirements.

TBS *Contracting Policy* outlines the requirement for periodic reporting of review activities (article 11.1.1), and for review of the elements of contracting to ensure compliance with policy. TBS policy, article 11.1.1, states, "Contracting authorities are encouraged to establish and maintain a formal challenge mechanism for all contractual proposals, including those within departmental authority." In our view a formal challenge mechanism can be centralized, decentralized or a combination of both. However, since a decentralized challenge function would constitute essentially a new approach for Justice, its use at least during the early stages should be accompanied by a significant level of involvement by both CMM and CRC. This involvement is essential if the Department wants to ensure the integrity and probity of contracting practices and should include an appropriate challenge function. As contracting practices in the Department improve, the level of involvement of the CMM and CRC could be revisited and decreased as appropriate.

The CMM and CRC will also need to adopt a greater monitoring and reporting capability, to identify any trends and ensure contracting activities are consistent with the requirements of the Department's contracting framework. The audit team is also of the view that the CMM can assist the CRC in strengthening its policy and periodic challenge function by providing a secretariat role for the Committee.

Recommendations and Management Response

5. It is recommended that the Director General, Finance, Administration and Programs:

- a) ensure that the CMM and CRC adopt an active leadership role in ensuring the integrity of the contracting function in the Department, whether the challenge function is centralized or decentralized;**

b) increase monitoring and reporting activities to ensure compliance to departmental contracting policy, procedures and guidelines and to monitor trends.

5 a) & b) Agree. As discussed earlier in the report, the CRC reviewed its mandate and determined it would best serve the Department as an advisory forum which reviews and monitors statistics and trends in order to recommend improvements to areas of concern. Overseeing the work of “decentralized” Sector Contract Review Committees (SCRC will also be incorporated in its mandate. These SCRCs could, among other responsibilities such as reporting on contracting activity, act as a sounding board independent of the project authorities. Members would require some knowledge of contracting policies and procedures. This is already in place in some areas, ex, Research and Statistics and Information Management Branch. It is also recommended that the initial challenge function be at the SCRC level. SCRCs will have access to CRC for advice or resolving disputes. Developing standard Terms of Reference for the model SCRC will be a priority.

2.3 Management Framework for Contracting—Capability

The CoCo framework outlines the capabilities that an organization must have in order to maintain the integrity of its contracting processes. This section provides more evidence in favour of ensuring that enough staff are in place and have the necessary knowledge, skills, and tools to support contracting objectives across the Department. The CoCo framework emphasizes the importance of coordinating decisions and actions and communicating relevant information across different parts of an organization.

Human Resources and Workload

At the time of the audit there are two full-time contracting officers and a contracting policy and training officer in the CMM, all supervised by a manager who is also responsible for materiel management (goods contracting and warehousing) and electronic forms. The entire staff is new to the Department of Justice or to the CMM, having taken up their positions either in the fall or winter of 2001.

The current staff find that their workload related to competitive contracts, all of which are posted on MERX, is demanding, which leads them to wonder how CMM kept pace in 1999 and 2000 when there was only one full-time officer routinely available. Workload management problems during this period are reported to have been exacerbated by the introduction of the new

departmental financial system and simultaneous reduction in CMM's staff levels. The staffing reduction occurred in anticipation of a displacement of workload from the CMM due to the new system's ability to assign contract numbers and produce pre-formatted contracts that would be filled in online by the end-user (departmental staff involved in the contracting process). Instead, implementing the system created an ongoing stream of end-user inquiries to the CMM concerning such things as policies and regulations governing the use of the system, and the meaning of its various fields. End-users who used the system infrequently would forget details of use, prompting additional calls. The CMM's reduced staff had to provide prolonged support to end-user enquiries until early 2001.

In 1999 and 2000 the CMM received little or no advance notification of requirements for its services. This is also the case today. The current staff have not worked in the Department long enough to determine whether there are cycles in the Department's competitive contracting activities. Thus far, the audit team has been told that the workload has been consistently high.

The CMM's current staff is not formally assigned responsibility for particular sectors. Work is assigned according to whoever receives the initial request for service. As individual workloads have grown the officers have developed an informal process for distributing the workload that does not require the intervention of the unit's manager. When this is insufficient to meet deadlines and commitments, the manager's support in establishing priorities (and, possibly, undertaking some of the work on a short term basis), is sought.

Informal discussions between CMM's two contracting officers occur frequently, and the manager is readily available for consultation. CMM staff use a status report template on a shared computer drive to keep track of work in process and completed contracts. A white board is used to track requests for proposals (RFPs) that the staff are ushering through the contracting process. A monthly report for the Director General tracks the staff's level of activity (e.g. number of RFPs, ACANs, contracts, memos, 9200s (PWGSC requisitions), and amendments completed each month, as well as the time, in hours, spent consulting clients).

As the CMM's current staff have come to know its clients (departmental staff involved in contracting processes), it has developed and offered, on-request, several presentations to client groups. The presentations cover the main steps and associated timings in the contracting process, applicable policies and regulations, and information on the CMM's services. Low interest from client groups to receive these presentations and the availability of CMM staff to deliver them are constraints on the number of presentations that have thus far been made.

Training

As noted earlier, no formal training was provided to responsibility centre managers during the period under review in this audit because of a lack of CMM staff. Managers not already knowledgeable about the contracting process would have had to rely on the Department's *Contracting for Services Manual*, direct inquiries to CMM (by telephone or e-mail), or on their colleagues and support staff for direct support. Indirect support was to have been available through the new financial system's online ability to provide contract numbers and produce a system-generated standard contract form that could be directly completed by the contracting individual. In practice, it appears that this "self-service" capability fell short of expectation. The system's requirements are reported to have not been at all obvious to end-users. As well, departmental experts in contract law who have reviewed the system-generated forms are of the opinion that the forms were developed by computer specialists without the required legal training, and that the online contractual forms are therefore seriously flawed and require revisions.

In these circumstances, and based on the audit team's other findings, it is not surprising that most individuals outside of the CMM do not appear to have developed a full and accurate understanding of the requirements of the contracting process, or of the information that has to be produced and retained to support it.

To mitigate these problems, the audit team has recommended that the current departmental contracting manual be revised and that a training session be developed for all managers with delegated authority for contracting (see Recommendation 1.c). Further, the audit team suggests that there would be merit to having the CMM periodically solicit the assistance of sector heads to ensure that any new sectoral staff that become involved in the contracting process receive the appropriate training.

Recommendations and Management Response

- 6. It is recommended that the Director General, Finance, Administration and Programs:**
 - a) undertake a project to review the system-generated contract forms produced by the Department's financial system to determine where and how they need to be modified;**
 - b) ensure that the required modifications are incorporated into the next maintenance release of the system.**

Completed. In use now since July 2002. The new forms ensure uniformity throughout the department, are "user-friendly" and ensure that all basic elements and components of a contract are captured.

- 7. It is recommended that the Director General, Finance, Administration and Programs, in consultation with those responsible for developing and providing a training session on contracting (as suggested in Recommendation 1.c), seek the ongoing support of sector heads to ensure that all employees involved in the contracting process receive appropriate training and that the responsibilities of managers with delegated authority for contracting are understood and carried out.**

Training has been developed and is available as described above in Recommendation and Response 1.c). In addition, basic contracting principles are included in modules of the Delegation of Financial Authorities training and the Financial Management Training.

2.4 Management Framework for Contracting—Monitoring and Learning

Finally, the CoCo framework provides criteria for committed organizations to monitor their performance and, from this activity, learn how to improve. Some of the criteria include monitoring external and internal environments to obtain information for measuring performance against targets, objectives, and plans. This section of the audit assesses the Department's efforts to monitor its own performance and recommends better monitoring functions that will help the Department to learn from its contracting activities.

Currently, little monitoring of contracting practices occurs in the Department of Justice because:

- significant contracting authority has been delegated to individual directors,
- there were human resource pressures within the CMM throughout 1999 and 2000,
- the CRC operated on a secretarial basis.

Annual reports on all contracting must be provided to the TBS so that it can produce the annual *Purchasing Activity Report*, which is posted on its Web site. No other reporting requirement is mandated. The TBS report provides no separate analysis of contracts below \$25,000, and only indicates total number and the value of contracts. The report shows that, across the Government in the calendar year 2000, 75.8 percent of all service contracts valued at \$25,000 or above were

let on a competitive basis. Based on an analysis of service contract data provided by the CMM, the Department of Justice's percentage for the same category of contracts is 56.6 percent. Earlier recommendations in this report seek to address concern about the high number of non-competitive contracts being issued by the Department (see recommendations 1, 3, 4, and 6).

The audit team's survey of other government departments showed that all have instituted stronger internal contract monitoring and challenge functions than those used by the Department of Justice, particularly for non-competitive contracts. These include requirements for the rigorous review and justification of proposed non-competitive contracts valued as low as \$10,000 including GST. It is not uncommon in other departments that managers wanting to let non-competitive contracts that exceed their delegated authority must appear face-to-face before the departmental CRC. Obviously, such practices meet government contracting policy and regulations, but an important benefit of such practices is that they provide an opportunity for senior management to learn of inconsistencies in the interpretation of contracting requirements across the Department. Management is then in a position to initiate the necessary learning opportunities to address them.

It is recognized that such monitoring processes can be very time consuming and can delay the contracting process. Recommendation 3 clarifies the contracting areas (dollar thresholds and amendments for non-competitive contracts) for which the CMM and CRC should focus their review, and Recommendation 4 provides for the development of a new "short form" contract that would expedite low-dollar value services contracting. Recommendation 5 outlines the nature of a review process (CMM approved or managers appearing before the CRC). Such qualified measures should help to expedite the contract review process.

TBS *Contracting Policy*, article 11.1.1, states, "Decisions made by these review units should be recorded and available for subsequent internal audits and for the periodic audits or evaluations conducted by the Auditor General or by the Treasury Board Secretariat." The CRC's current consideration to include within its mandate a monitoring of contracting activity by sector (through a review of statistics and trends) is very positive and should be encouraged. It would strengthen the existing management framework surrounding contracting in the Department of Justice. Ongoing analysis would assist senior management in identifying where in the Department there is insufficient knowledge to ensure compliance with government policy and regulations such that it could be addressed in a timely manner.

TBS policy requirements for recording decisions can be met by implementing Recommendation 3. This recommendation will allow CMM to log and track information on

non-competitive contracts that are above \$10,000. The CMM would then be able to collect such information in a periodic report for the CRC's review. Such a report would assist the CRC to fulfill its challenge function and would also serve to better monitor departmental contracting practices.

Recommendations and Management Response

8. It is recommended that the Director General, Finance, Administration and Programs, prepare a regular report for the CRC that summarizes:

- **the number of contracts that are brought before the CRC; and**
- **the number of contracts and their departmental origin that are approved and rejected by the CRC.**

This recommendation deviates slightly from previous recommendations on the role and responsibilities of the Contract Advisory Committee. However, reporting on the above would be done, but only on an as required basis and would be in addition to reporting on other monitoring activities. When establishing the mandate of both the centralized and decentralized control functions, this recommendation will be factored in.

9. It is also recommended that the Director General, Finance, Administration and Programs, prepare a regular report for the CRC that summarizes departmental contracting activities (by sector), including for example:

- **number of contracts and dollar value;**
- **percentage of competitive versus non-competitive;**
- **number and value of amendments.**

This is available and has been used; its distribution, timing and frequency will be reviewed.

3. CONCLUSION

Throughout 1999 and 2000 several combined factors resulted in an erosion of the management framework for contracting in the Department of Justice. These factors included:

- staffing shortages experienced by the CMM,
- weaknesses in the departmental *Contracting for Services Manual*,
- a lack of adequate knowledge of the contracting requirements by managers with delegated authority for contracting,
- a lack of adequate monitoring of the contracting process within the Department.

When implemented, the recommendations in this report will work toward alleviating the deficiencies and inconsistencies noted in the contracting process, and will help to provide the Department with a sound framework for its contracting activities.

4. RECOMMENDATIONS AND MANAGEMENT RESPONSE

- 1. It is recommended that the Director General, Finance, Administration and Programs, develop a framework that will assist managers to better understand and implement the contracting process. The framework should include:13**
 - a) revisions to the Department's *Contracting for Services Manual* to provide a more balanced presentation of the factors governing the awarding of non-competitive contracts in the Department;**
 - b) the development of a succinct Manager's Guide to the Contracting Process that clearly outlines the authorities of managers and the steps to be followed by managers with delegated authority for contracting;**
 - c) the development of a training session to complement the Manager's Guide to the Contracting Process, that is made available to all managers with delegated authority for contracting.**

- a) To keep the number of reference documents to a manageable number, with respect to updates and consistency from one to the other, the Manual will be replaced with the Manager's Guide [see recommendation b) below].

- b) Agree. A Manager's Guide will be created and will include a new and detailed Delegation of Financial Signing Authorities Chart and its Supporting Notes, the current chapters on Contracting Principles found in the training manual, pertinent chapters from the existing Contracting for Services Manual, the Contract Initiation Document and the Request for Proposals templates which provide the necessary contract preparation steps to be followed by managers with delegated authority.

- c) Agree. A two-day training session has been developed and presented to approximately 135 assistants and some managers in the Regions (Atlantic, Québec, Prairies, Pacific) and at HQ. Shorter ½-day and 1-day sessions are also available and have been presented in some regions to meet managers' needs.

- 2. It is recommended that the Director General, Finance, Administration, and Programs, prepare a letter for the signature of the Deputy Minister to all Responsibility Centre Managers with delegated authority, stressing the need to maintain adequate documentation on contracting files and stating that the use of the CPAD for all contracting activities would facilitate this task.17**

Agree. A new Contract Initiation Document has been developed to replace the current CPAD and will be required on all contracting files. It is gradually being introduced at contract training sessions.

- 3. It is recommended that the Director General, Finance, Administration and Programs, bring forward an updated departmental contracting framework to the Executive Council for its approval. The framework should:20**

- a) clearly enunciate the roles and responsibilities of all parties involved in the contracting process (CMM, CRC, Sectors and Regional Offices) with a view to increasing accountability for the contracting process at all levels;
- b) ensure that formal challenge mechanisms (centralized and/or decentralized) exist to maintain the integrity of the contracting process;
- c) to the extent practicable, encourage all parties involved in the contracting process to adopt contract review practices that are similar to those in place in other government departments, by requiring that the following be subject to a mandatory review:
 - all proposed non-competitive contracts valued at greater than for example, \$10,000;
 - all proposed non-competitive contracts with an amendment valued at equal to or greater than its entry value;
 - all proposed non-competitive contracts requiring more than one amendment.

a) Agree. Roles and Responsibilities will clearly be defined in the new Delegation of Financial Signing Authorities Chart, its Supporting Notes and accompanying Table of Equivalents. These new financial delegation instruments have undergone an extensive review process by the Regions and various HQ stakeholders (for example, the Contracts Review Committee, Corporate Counsel, Internal Audit, Business and Financial Managers and Senior Management). It is currently being reviewed at the DM level. Proposed

revisions to the delegation of authorities, include a reduced Amendment Authority from \$25K to \$10K, as well as restricted Contract Performance Authority to RC Managers (rather than to project leaders or administrative staff), etc.

- b) Agree. CMM will begin to work with some regions and sectors to develop a model "decentralized control function". A request will be sent to Direct Reports asking them to identify and appoint managers who will be responsible for this function within their sectors. It is anticipated this call letter will be sent out by early December.
- c) Partially agree. Roles and responsibilities, including issues mentioned above in the Recommendation (3 bullets) will be factored in and considered. Once the decentralized control function has been established, it is anticipated that full implementation in the regions and within sectors should be completed by mid 2004.

4. It is recommended that the Director General, Finance, Administration and Programs, consider including in the updated policy a “short form”, not-to-be-amended services contract for expenditures of less than \$10,000 (including GST), and ensure that training is available to all managers concerning the use of this contract.....21

Agree. This is currently being developed. Maximum value of such contracts has been discussed at Contract Advisory Committee. It was agreed that \$10K would be the maximum value for these contracts.

5. It is recommended that the Director General, Finance, Administration and Programs:24

- a) **ensure that the CMM and CRC adopt an active leadership role in ensuring the integrity of the contracting function in the Department, whether the challenge function is centralized or decentralized;**
- b) **increase monitoring and reporting activities to ensure compliance to departmental contracting policy, procedures and guidelines and to monitor trends.**

5 a) & b) Agree. As discussed earlier in the report, the CRC reviewed its mandate and determined it would best serve the Department as an advisory forum which reviews and monitors statistics and trends in order to recommend improvements to areas of concern. Overseeing the work of “decentralized” Sector Contract Review Committees (SCRC will also be incorporated in its mandate. These SCRCs could, among other responsibilities such as reporting on contracting activity, act as a sounding board independent of the project

authorities. Members would require some knowledge of contracting policies and procedures. This is already in place in some areas, ex, Research and Statistics and Information Management Branch. It is also recommended that the initial challenge function be at the SCRC level. SCRCs will have access to CRC for advice or resolving disputes. Developing standard Terms of Reference for the model SCRC will be a priority.

6. It is recommended that the Director General of Finance, Administration and Programs:27

- a) undertake a project to review the system-generated contract forms produced by the Department's financial system to determine where and how they need to be modified;
- b) ensure that the required modifications are incorporated into the next maintenance release of the system.

Completed. In use now since July 2002. The new forms ensure uniformity throughout the department, are "user-friendly" and ensure that all basic elements and components of a contract are captured.

7. It is recommended that the Director General, Finance, Administration and Programs, in consultation with those responsible for developing and providing a training session on contracting (as suggested in Recommendation 1.c), seek the ongoing support of sector heads to ensure that all employees involved in the contracting process receive appropriate training and that the responsibilities of managers with delegated authority for contracting are understood and carried out.....28

Training has been developed and is available as described above in Recommendation and Response 1.c). In addition, basic contracting principles are included in modules of the Delegation of Financial Authorities training and the Financial Management Training.

8. It is recommended that the Director General, Finance, Administration and Programs, prepare a regular report for the CRC that summarizes:.....30

- the number of contracts that are brought before the CRC; and
- the number of contracts and their departmental origin that are approved and rejected by the CRC.

This recommendation deviates slightly from previous recommendations on the role and responsibilities of the Contract Advisory Committee. However, reporting on the above would be done, but only on an as required basis and would be in addition to reporting on other monitoring activities. When establishing the mandate of both the centralized and decentralized control functions, this recommendation will be factored in.

9. It is also recommended that the Director General, Finance, Administration and Programs, prepare a regular report for the CRC that summarizes departmental contracting activities (by sector), including for example:30

- **number of contracts and dollar value;**
- **percentage of competitive versus non-competitive;**
- **number and value of amendments.**

This is available and has been used; its distribution, timing and frequency will be reviewed.

APPENDIX: THE COCO CRITERIA

The Canadian Institute of Chartered Accountants' Criteria of Control (CoCo) are based on the premise that an organization performs activities guided by an understanding of its **purpose** (the objectives to be achieved) and supported by **capabilities** (information, resources, supplies, and skills). The organization must be **committed** to consistently and repeatedly performing the identified task well. A committed organization **monitors** its performance and the environment to **learn** how to improve.

The following criteria constitute a management framework that can be used to assess any activity in an organization.

Purpose

- Objectives should be established and communicated.
- Significant internal and external risks faced by an organization in the achievement of its objectives should be identified and assessed.
- Policies designed to support the achievement of an organization's objectives and the management of its risks should be established, communicated, and practised so that people understand what is expected of them and the scope of their freedom to act.
- Plans to guide efforts in achieving the organization's objectives should be established and communicated.
- Objectives and related plans should include measurable performance targets and indicators.

Commitment

- Shared ethical values, including integrity, should be established, communicated, and practised throughout the organization.
- Human resource policies and practices should be consistent with an organization's ethical values and with the achievement of its objectives.

- Authority, responsibility, and accountability should be clearly defined and consistent with an organization's objectives so that decisions and actions are taken by the appropriate people.
- An atmosphere of mutual trust should be fostered to support the flow of information between people and their effective performance toward achieving the organization's objectives.

Capability

- People should have the necessary knowledge, skills, and tools to support the achievement of the organization's objectives.
- Communication processes should support the organization's values and the achievement of its objectives.
- Sufficient and relevant information should be identified and communicated in a timely manner to enable people to perform their assigned responsibilities.
- The decisions and actions of different parts of the organization should be coordinated.
- Control activities should be designed as an integral part of the organization, taking into consideration its objectives, the risks to their achievement, and the inter-relatedness of control elements.

Monitoring and Learning

- External and internal environments should be monitored to obtain information that may signal a need to re-evaluate the organization's objectives or control.
- Performance should be monitored against the targets and indicators identified in the organization's objectives and plans.
- The assumptions behind an organization's objectives should be periodically challenged.
- Information needs and related information systems should be reassessed as objectives change or as reporting deficiencies are identified.
- Follow-up procedures should be established and performed to ensure appropriate change or action occurs.
- Management should periodically assess the effectiveness of control in its organization and communicate the results to those to whom it is accountable.