

TRANSPORTATION SAFETY BOARD

Audit of Contracting and Procurement Practices

Final Audit Report

EXECUTIVE SUMMARY

BACKGROUND

The Transportation Safety Board (TSB) Audit Committee uses an audit planning process based on risk to identify areas that should be audited. As a result of this process, the contracting function was identified as an area that should be audited in 2004-2005.

The TSB contracted Interis to conduct an internal audit on contracting and procurement of services within the TSB.

AUDIT OBJECTIVE AND SCOPE

The objective of the audit was to provide assurance to the TSB Audit Committee that the contracting practices at TSB comply with Treasury Board's Contracting Policy and, more generally, whether the contracts awarded by TSB can withstand public scrutiny with respect to access, competition, fairness and best value to the Crown.

The audit scope consisted of TSB awarded service contracts over \$5,000 in the calendar year 2004. The audit scope did not include goods contracts since they are awarded by Public Works and Governments Services Canada (PWGSC) (for those purchases over \$5,000) or are managed by the Responsibility Centre (RC) Manager (for those purchases under \$5,000). Similarly, any service contracts awarded by PWGSC or managed by the RC Manager (contracts under \$5,000) were outside the scope of this audit. The audit scope also included a review of the Management Control Framework practices that support the contracting function at TSB.

CONCLUSION

Based on the evidence examined during the audit, the TSB contracting practices generally adhere to Treasury Board Contracting Policy; however, in some instances the files lacked documented evidence of the implementation of Section 32 of the *Financial Administration Act* (FAA) relating to commitment of funds as well as evidence to demonstrate fairness and due regard for economy. Other areas that could be strengthened include training, documenting procedures, amendment templates, and monitoring of practices.

RECOMMENDATIONS

Compliance of Contracts with Treasury Board Contracting Policy

1. The Director of Corporate Services should ensure that roles and responsibilities are understood by those with contracting responsibilities and that the Procurement Specialist be involved in the planning stages of procurement once the RC Manager identifies a need to contract services. This control regime will enhance TSB's ability to be compliant with Treasury Board Contracting Policy and with the FAA.
2. The Director of Corporate Services should ensure that funds have been committed on all requests for contracts prior to preparing contracts for signature to sustain compliance with the Section 32 of the FAA through tools such as contract requisition forms and supporting procedures.
3. The Director of Corporate Services should ensure that fairness and due regard for economy is occurring on all contracts to reflect the intentions of the Treasury Board Contracting Policy through documented procurement procedures and appropriate training.

Management Control Framework

4. The Director of Corporate Services should ensure that TSB expenditure and contracting procedures reflecting Treasury Board Contracting Policy and FAA implementation requirements be documented.
5. The Director of Corporate Services should continue current efforts related to training on contracting and Treasury Board Contracting Policy to ensure that those with contracting responsibilities receive an adequate level of training to sustain compliance with the Treasury Board Contracting Policy and FAA requirements for the expenditure process.
6. The Director of Corporate Services should ensure that an amendment template be developed that sustains compliance to the Treasury Board Contracting Policy requirements for contracts and amendments to adequately protect the TSB and the vendor.
7. The Director of Corporate Services should consider the development of a reporting mechanism and an appropriate reporting schedule to monitor compliance and to provide management with a level of assurance that compliance to Treasury Board Contracting Policy is occurring.

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1.0 OVERVIEW

1.1 BACKGROUND

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The audit was conducted at Transportation Safety Board Head Office in Gatineau, Quebec, between March 10 and March 31, 2005.

1.3 TSB CONTRACTING PROCESSES AND ACTIVITIES

The contracting responsibility at TSB is divided into two responsibility areas. The RC Manager has expenditure authority for contracts. The Material and Facilities Management Unit within the Corporate Services Branch supports the RC Manager by conducting the procurement process and preparing contracts.

The procurement of goods and services over \$5,000 is administered and coordinated centrally by Procurement Specialists in the Material and Facilities Management Unit in Headquarters. Requisitions for goods are forwarded to PWGSC for procurement, whereas the procurement of services is conducted at the TSB by the Procurement Specialist. Contracts for less than \$5,000 are administered directly by RC Managers through other procurement instruments such as acquisition cards and purchase orders.

The TSB administered contracts for 2004 are summarized below.

TSB Contract Categories	Number of Contracts	Value of Contracts in Dollars
Service contracts between \$5,000-25,000	64	\$1,080,325
Service Contracts over \$25,000	13	706,543
Total contracts administered by TSB in 2004 over \$5,000	77	\$1,786,868

1.4 METHODOLOGY

The methodology used in conducting the audit included fieldwork on site at Transportation Safety Board Headquarters in Gatineau, Quebec. The following activities were undertaken:

- Review of relevant documentation including the DATACAP reports to Treasury Board, the Contracting database in Microsoft® Excel, Corporate Services Branch Organizational Charts, Implementation of New Financial Delegations, training manuals used with RC Managers, TSB Delegation of Financial Authorities Policy, Treasury Board Contracting Policy, *Financial Administration Act*, Treasury Board Delegation of Authorities Policy, and the TSB Specimen Signing Authority Form.
- Interviews with selected individuals from the Corporate Services Branch.
- Review of contracting files based on a representative sample and according to the following criteria:
 - Coverage of at least 10% of contracts
 - Representation of Advance Contract Award Notice (ACAN), sole-source and competitive contracts
 - Larger dollar value contracts
 - Contracts with multiple amendments
 - Sole-source contracts close to threshold amount
 - Contracts with dates close to year-end, and
 - Any other contracts that demonstrated risk for other reasons.

The sample consisted of 12 files, representing approximately 16% of the total number of contracts in the audit scope. The dollar value of the contracts reviewed was \$398,422, representing approximately 22% of all contracts administered in TSB in 2004 over \$5,000.

1.5 CONCLUSION

Based on the evidence examined during the audit, TSB contracting practices generally adhere to Treasury Board Contracting Policy; however, in some instances the files lacked documented evidence of the implementation of Section 32 of the Financial Administration Act (FAA) relating to commitment of funds as well as evidence to demonstrate fairness and due regard for economy. Other areas that could be strengthened include training, documenting procedures, amendment templates, and monitoring of practices.

2.0 OBSERVATIONS AND RECOMMENDATIONS

2.1 COMPLIANCE OF CONTRACTS WITH TREASURY BOARD CONTRACTING POLICY

The following observations were made on the level of compliance with Treasury Board's Contracting Policy based on interviews and a sample review of contract files.

STRENGTHS RELATED TO COMPLIANCE

The following observations describe the areas where Transportation Safety Board was achieving expected compliance with Treasury Board Contracting Policy.

IDENTIFYING A NEED TO CONTRACT

The need for entering into a contract was clearly documented on all files audited. This was demonstrated either through a background statement outlining the situation leading to the requirement or through the statement of work.

APPROPRIATENESS OF CONTRACTING METHOD

The method of contracting used was appropriate, both for contracts less than \$25,000 and for contracts over \$25,000 (competitive contracting).

For contracts under \$25,000, Treasury Board encourages the use of a competitive process whenever possible. TSB used limited tendering (inviting two/three firms to submit bids) on four files audited that were between \$10,000 and \$25,000. This practice meets the spirit of the Treasury Board Contracting Policy by administering a competitive process whenever possible for contracts less than \$25,000.

Contracts over \$25,000 were competitive and appropriate. An Advance Contract Award Notice (ACAN) file was examined and it met Treasury Board Contracting criteria for ACAN. In all files reviewed, amendments met Treasury Board Contracting Policy criteria.

IDENTIFYING THE NATURE OF SERVICE TO BE PROVIDED

The nature of the service to be delivered was clearly defined and generally met the expectations of Treasury Board Contracting Policy. The expectations are: a clear statement describing the objective of the task and the work to be achieved; an accurate description of the scope of the work, including its range, extent and bounds; and a time schedule, or their equivalent. This was demonstrated by a clear definition of requirements that was attached to or incorporated into the contractual document, noted in all contract files reviewed.

CONTROLLING NON-PERFORMANCE

The potential non-performance of a contractor is adequately mitigated through detailed contract Terms and Conditions (e.g., time of the essence clauses, termination or suspension clauses, termination due to default of contractor clauses), assignment objective, statement of work, and timelines. This was noted in all contract files reviewed.

VENDOR ROTATION

The audit found that a fair rotation of vendors was occurring at the TSB. The most frequently used supplier was used six times in 2004; however, these were separate requirements for various locations across Canada. In addition, four firms received two contracts each in 2004 and the remainder of firms had one contract during that period. There was no indication to suggest overuse of a single vendor.

COMPLIANCE TO SECTION 34 OF THE FAA

A review of invoices for the contracts sampled demonstrated that Section 34 was signed by individuals with delegated authority and the invoices agreed with contract amounts and vendors.

MEETING TREASURY BOARD CONDITIONS FOR AMENDMENTS

Conditions for amendments are met and amendments are not a form of contract splitting. There were no amendments audited that demonstrated inadequate initial funding resulting in amendments to increase the contract value; inadequate pre-planning resulting in amendments to change the design, specifications or quantity involved; or improper administrative procedures necessitating amendments to change the specifications and delivery or other requirements to protect the contractor or government agency involved.

Use of amendments included situations that facilitated the attainment of the contract objective such as extending due dates or changing the scope of the work, as well as anticipated amendments regarding moving on to the next phase of a piece of work.

An analysis of the contracting list for 2004 revealed that there was very little repetitive contracting occurring.

WEAKNESSES RELATED TO COMPLIANCE

The review of contract files also identified the following weaknesses in current practices that may expose the TSB to risk of non-compliance with Treasury Board Policy.

CONTRACTS ARE APPROVED BY INDIVIDUALS WITH DELEGATED AUTHORITY

In all instances in the file review, the RC Managers, who have the delegated authority for expenditure and contracting at TSB, are approving and signing the contracts. The arrangement in place at TSB permits RC Managers to enter into contracts without involving procurement services at the appropriate planning stage. In three contracts audited, procurement services did not appear to be adequately involved in the planning stage, since the work had commenced prior to having a written contract in place. In these instances, the services requested related to management consulting, legal services, and communications. None of these contracts had indications of urgency on file that would have justified starting work prior to a contract being in place. Commencing work before a written contract is in place could result in a number of issues; for example, since some of these files were also lacking a proposal document, the contractor may not agree with Terms and Conditions prepared after the work began. It also exposes the TSB to risks that the written contract is designed to protect against.

Furthermore, interviews indicated that the Material and Facilities Management Unit is the designated procurement authority for contracts over \$5,000 in order to provide a control regime on contracting for compliance to Treasury Board Contracting Policy and to the FAA. In instances where work starts prior to having a documented contract, the Procurement Specialist has no opportunity to conduct procurement activities related to the policy - such as assessing whether the appropriate type of contract is used (sole-source vs. competitive), ensuring ACAN obligations are met, avoiding future inappropriate amendments, and validating fairness and due regard for economy - since the contracts are awarded without the prior involvement of procurement services. This practice exposes the TSB to the risk of non-compliance to Treasury Board Contracting Policy.

RECOMMENDATION:

1. The Director of Corporate Services should ensure that roles and responsibilities are understood by those with contracting responsibilities and that the Procurement Specialist be involved in the planning stages of procurement once the RC Manager identifies a need to contract services. This control regime will enhance TSB's ability to be compliant with Treasury Board Contracting Policy and with the FAA.

COMPLIANCE TO SECTION 32 OF THE FAA

Evidence of funds being committed prior to entering into a contract (Section 32) was missing on four files audited. This is particularly significant since the contracting workflow at TSB occurs outside the financial system, exposing TSB to the risk of non-compliance to Section 32 of the FAA. Interviews indicated that in the recent past, an email or a brief note at times were used to communicate proof that funds were committed prior to entering into a contract. Current progress includes the development of a requisition form that has a sign-off to clearly evidence Section 32 of the FAA. Consistent use of this requisition form is a move towards demonstrating the implementation of Section 32 of the FAA.

RECOMMENDATION:

2. The Director of Corporate Services should ensure that funds have been committed on all requests for contracts prior to preparing contracts for signature to sustain compliance with the Section 32 of the FAA through tools such as contract requisition forms and supporting procedures.

FAIR CONTRACTING – DUE REGARD FOR ECONOMY

There was insufficient documentation on file to demonstrate that contracting is conducted fairly and with due regard for economy. Although one ACAN contract sampled was appropriate and met Treasury Board Contracting Policy criteria for this type of procurement method, it lacked evidence that price validation had occurred. Other files sampled for values over \$25,000 lacked completed and signed evaluation results. Files contained the winning proposal and an unsigned evaluation report comparing bids received. Unsuccessful bids were kept in a separate file. There was no indication that price negotiation or price validation had occurred. In addition, in five instances, sole-source contracts lacked the required sole-source justification.

RECOMMENDATION:

3. The Director of Corporate Services should ensure that fairness and due regard for economy is occurring on all contracts to reflect the intentions of the Treasury Board Contracting Policy through documented procurement procedures and appropriate training.

2.2 MANAGEMENT CONTROL FRAMEWORK

The following observations were made on the management control framework practices used at TSB regarding contracting, based on interviews and review of relevant documentation.

DOCUMENTATION OF PROCEDURES

There is no documented TSB contracting procedure in place to assist the contracting specialist in administering service contracts or in communicating with RC managers who have contracting responsibilities. Procurement staff have indicated that they refer to the Treasury Board website and to each other for guidance.

The lack of documented contracting procedures exposes the TSB to the risk of being non-compliant with Treasury Board Policy since contracts at times could be incorrectly or inconsistently prepared as a result of incorrect working assumptions. Furthermore, there has been significant turnover in the Procurement Specialist position, with four employees occupying the position in the past two years. This further exposes the TSB to a risk of non-compliance to Treasury Board Contracting Policy and to FAA requirements because there are no documented procedures to support new employees.

RECOMMENDATION

4. The Director of Corporate Services should ensure that TSB expenditure and contracting procedures reflecting Treasury Board Contracting Policy and FAA implementation requirements be documented.

STANDARD TEMPLATES AND STANDARD TERMS AND CONDITIONS

Standardized contracts and forms are in place and are being used. Forms are available for requisitions and Section 32 sign-off, justification of sole-source contracting, and contract terms and conditions. Standard forms that reflect Treasury Board Policy requirements act like a checklist of requirements and thus provide an added control point to ensure sustained compliance to Treasury Board Contracting Policy; they also ensure that contracts consistently contain a complete complement of appropriate terms and conditions.

However, the standardization of contracting documents could be further strengthened by adding a standard form for amendments, which are currently processed as letters to the vendors that are attached to the contracts. The letters could be interpreted as a letter requesting an amendment to a contract rather than the actual amendment. There is a risk that, in some instances, letters may lack a complete set of Treasury Board Policy criteria to protect the TSB and the vendor.

RECOMMENDATION

5. The Director of Corporate Services should ensure that an amendment template be developed that sustains compliance to the Treasury Board Contracting Policy requirements for contracts and amendments to adequately protect the TSB and the vendor.

TRAINING RELATED TO CONTRACTING PRACTICES

Training on contracting practices was given to procurement personnel through a one-day course that gave an overview of procurement and contracting practices. Interviews revealed that training received inadequately addressed the development of evaluation methodologies for competitive contracts. The file review corroborates this finding, since bid evaluation documentation was either missing or incomplete in files and competitors' bids were not on file. Current practices are insufficient to provide consistent application of the competitive process.

TSB has taken steps to improve awareness of Treasury Board Contracting Policy for RC Managers who have contracting responsibilities at TSB. Approximately half of TSB RC Managers recently received a half-day training by the School of Public Service on Treasury Board Contracting Policy requirements. TSB has indicated that the same half-day training will be given to the remainder of the RC managers during the coming year.

RECOMMENDATION

6. The Director of Corporate Services should continue current efforts related to training on contracting and Treasury Board Contracting Policy to ensure that those with contracting responsibilities receive an adequate level of training to sustain compliance with the Treasury Board Contracting Policy and FAA requirements.

MONITORING OF CONTRACTING PRACTICES

Contracting activities are not being formally monitored for compliance to Treasury Board Contracting Policy. TSB does report to Treasury Board on specific attributes related to the number and dollar value of contracts, but does not generate reports for internal monitoring. The TSB does have a contracting database to record contractual data, which if enhanced with relevant attributes - such as date of funds committed, nature of services to be provided, and assessments of rates to market value - could be used to generate contracting activity reports for internal monitoring purposes. A reporting and monitoring regime would assist in providing TSB management with assurance that contracting is managed and conducted in compliance with Treasury Board Contracting Policy.

RECOMMENDATION

7. The Director of Corporate Services should consider the development of a reporting mechanism and an appropriate reporting schedule to monitor compliance and to provide management with a level of assurance that compliance to Treasury Board Contracting Policy is occurring.