
Report on Contract Management Practices Review

Ministry of Finance

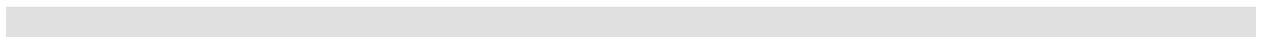
**Internal Audit & Advisory Services
Ministry of Finance**

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Introduction

The Office of the Comptroller General (OCG) provides leadership to the Province of BC's (the province) financial community to ensure effective financial, procurement and capital management. The OCG is responsible for the overall quality and integrity of the government's financial management and control systems.

Legal Encumbrance Branch¹ (LEB) was one of six branches within OCG. LEB was responsible for developing and maintaining the province's legal encumbrance policies, procedures, business processes and systems. This includes ensuring all government financial or payment systems/applications have the ability to divert payments to meet LEB's legal mandate.

In meeting its responsibilities, the branch issued a Request for Proposal to develop a Legal Encumbrance System (LES) that would automate routine tasks involved in the legal encumbrance process. On December 13, 2007 a General Service Agreement was signed by the Ministry of Finance (the ministry) and a contractor to design, develop and deliver a LES. On December 3, 2008, User Acceptance Testing began on the LES where the ministry identified significant gaps in the business requirements. The ministry held meetings with the contractor, consulted with legal services and advised the Comptroller General of a potential breach of contract.

In the absence of any mechanism to assess the contractor's overall performance in government, and while litigation is in process, other ministries of government are continuing to work with the contractor. Throughout fiscal 2008/09 the contractor received \$8.6 million for their work with the province. The lack of a consistent method to capture and share information regarding contractor performance has been identified as a control weakness within procurement and contract management practices. Internal Audit & Advisory Services (IAAS) was asked to review agreements between the province and the specified contractor, and to identify options that may help mitigate any gaps within current procurement and contract management practices.

¹ Since the commencement of this review, LEB was amalgamated into Corporate Compliance and Controls Monitoring Branch.

Purpose

The purpose of this engagement was to determine whether ministries that entered into agreements with a specific contractor were in compliance with procurement and contract management practices as outlined in government policy.

Scope & Objectives

The scope of this review included agreements between the province and the contractor where payments were made during fiscal 2008/09.

The objective of this review was to assess the ministries' procurement and contract management practices with this particular contractor for compliance with the BC Government's Core Policy and Procedures Manual (CPPM) in the following specific areas:

- contract administration and monitoring;
- post-contract evaluation;
- contractor relationship management; and
- contract billings and payments.

Due to ongoing litigation, our review of agreements will exclude Contract Number: C08OCG14855, between the contractor and the ministry.

Please note that comments in this report are directly related to those contracts with the specified contractor only and may not be representative of ministry contracting practices with other contractors.

Approach

The sample for our review comprised of all contracts (with the exception of Contract Number: C08OCG14855) whereby the specified contractor received payment from the province during fiscal 2008/09.

Our approach involved:

- reviewing the ministries' procurement, contract management and contract payment documents and processes;

- interviewing ministry staff involved in the procurement and administration of the sample of agreements between the province and the specified contractor during our scope period; and
- relying on the work performed on our behalf by the Corporate Compliance and Controls Monitoring Branch of the ministry.

IAAS also recently completed a cross government review of information technology contracting practices (“Report on Cross-Government Information Management/Information Technology (IM/IT) Contracting Practices” project number 500181) where 450 IM/IT contracts across core government for the fiscal years 2007 through 2010 were reviewed. That review provided advice on solicitation practices for both new and repeat contracts, cost allocation to operating and capital accounts, consistency of interpretation of the CPPM, sound management practices within ministries, and opportunities to obtain IM/IT services more effectively. As such, this report is referred to when it provides further comment on any issue this review identified, if applicable.

Any issues identified in this report are based on a summary of all contracts reviewed. As part of our report clearance process, we provided individual feedback to the ten ministries that had contracts with the specific contractor.



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Comments and Recommendations

1.0 Financial Compliance Review

Our review was limited to one contractor's agreements with ten ministries during the scope period 2008/09. Generally, we found these ministries' practices complied with the specific areas of the CPPM within our review.

Overall, the contracts in our sample had clearly defined deliverables. Contracts and Modification Agreements were signed by the appropriate level of Expense Authority (EA) but improvements can be made on the timeliness of these agreements to ensure they are complete and signed before services are provided and payments are made.

Likewise, there are opportunities to improve the timeliness and completion of post contractor evaluations; however, the evaluations reviewed indicated that the ministries were generally satisfied with the work performed by the contractor. For agreements where post contract evaluations were not warranted, we noted evidence of assigned ministry staff monitoring the progress and deliverables of the contractor.

Generally, ministries had clearly defined payment terms. We also found payments were for services provided by the contractor within the contract terms, with a few small exceptions.

While the introduction of a government-wide contract management system may facilitate sound contract management practice, the Director, Procurement Governance within Financial Management Branch (FBM) should be consulted to determine if the collection of individual contractor evaluations for government-wide use is considered an acceptable and standard practice.

2.0 Contract Administration and Monitoring

During the 2008/09 fiscal period, the contractor had 23 contracts (amongst 10 ministries) with the province. There were 11 Direct Awards contracts, 11 contracts procured through the Request for Proposal (RFP) process and one contract awarded from a Request for Qualifications (RFQ) list established by the Project Management Centre of Excellence. Several contracts were multiple year contracts entered into prior to fiscal 2008/09, which extended beyond our scope period or were repeat contracts.

As part of contract administration and monitoring, we specifically looked at contract deliverables, modifications, monitoring, and performance assessment. Our review did not include an assessment of planning, solicitation or award processes. As such, the rationale for different procurement methods such as Direct Award versus RFP was not part of our review. These areas, however, were reported under IAAS' recent IM/IT cross government contract review as discussed in the Approach section above.

2.1 Contract Deliverables

Generally, we found that deliverables stated in the 11 contracts procured through the RFP process were aligned with the service deliverables required in the RFP, with one exception. This contract's deliverables were not aligned with the RFP which the contractor responded to. The ministry did not award a contract for the original RFP; however, the RFP contained a clause that allowed the program area to acquire resources for other related projects. We were informed the ministry used this clause to award the contract for a related project to the specific contractor. While this contract was entered into within the guidelines of the RFP, this practice could have exposed the ministry to a potential risk of litigation.

We also found the other 12 contracts' (Direct Award and through RFQ) service deliverables were clearly defined.

In most cases, ministries' contracts with this specific contractor established clear outputs, outcomes and reporting requirements. We identified some minor observations in a few ministries and we provided specific suggestions to the ministries involved to improve the wording to link payments to deliverables, project phases to expected completion dates, and requirements for frequency/ format for reporting, where required.

Where there were concurrent contracts with the same contractor in the same ministry branch or program area, we found the contracts were for distinctly different deliverables.

We also noted that ministries did not always sign their contracts on a timely basis. Contracts should be signed before the contract's effective start date so both parties' expectations are agreed upon before services are provided.

Recommendations

- (1) **We recommend the FMB reiterates to ministries the need and importance of signing contracts prior to their effective start dates.**

2.2 Contract modifications

In our sample, 16 out of the 23 contracts had changes made to the original contract through modification agreements. Some modification agreements extended the service dates only and did not result in any increase in fees. Other modification agreements increased the total contract values resulting from the provision of additional services requested by the ministries or additional costs related to the extension of the contract allowable under the RFP.

We found all but one contract had modification agreements when necessary. This one contract was awarded using a RFQ list. By increasing the original value from \$74,500 to \$86,200 without a modification agreement and without advertising nationally on BC BID, the extension of the service date and related costs resulted in the total contract value exceeding the Trade, Investment and Labour Mobility Agreement threshold of \$75,000. According to the documentation in the contract file, the extension was not foreseen and the need for a modification agreement was inadvertently overlooked.

While the modification agreements were approved and signed by the appropriate level of EAs, we found that most ministries can improve the timeliness for completion of their modification agreements. Our review identified that the formalization of the modification agreements were delayed from five days to approximately 60 days.

Recommendation

- (2) **We recommend the FMB reiterate to ministries the need and importance of signing modification agreements on a timely basis.**

3.0 Post Contract Evaluation

The CPPM requires post contract evaluations to be performed on every contract whose value exceeds \$50,000. There were 12 contracts whose contract term expired during our scope period that met the \$50,000 threshold and required post contract evaluations.

We found improvements can be made on the timeliness of these evaluations as two were not done and two of the evaluations were prepared only as a result of our review. The evaluations we reviewed indicated that ministry staff were generally satisfied with the deliverables provided by the contractor.

We found that for those contracts where post contract evaluations were not required as the contracts were still active, documentation in contract files and interviews with staff indicated ongoing monitoring.

While government does not have a standard template for post contract evaluations, we found varying degrees of detail on ministry specific forms. Generally, we found the performance evaluation forms used by ministries could be improved by including areas earmarked for the date and the name of the preparer of the evaluations. Should the evaluations be reviewed at a later date, the person preparing the evaluation can then be contacted for further clarification, if required.

Recommendations

(3) We recommend:

- **the FMB reiterate that post contract evaluations should be done on a timely basis; and**
- **evaluation forms used by the ministries should include the date and the name of the preparer.**

4.0 Contractor Relationship Management

As part of contractor relationship management, it is important to ensure that a contract does not create an implied employee-employer relationship. This risk is more applicable to individual contractors performing work for government. In this case, the specified contractor is a limited company with numerous employees and as such, this risk is not applicable.

Where we were able to identify the contractor's staff assigned to a contract, we confirmed that no employees used by the contractor were employees with the province at the same time.

Contract relationship management must include ongoing monitoring by the ministries that had individual contracts with the contractor.

We found that ministry assigned staff had processes in place to monitor the service deliverables and progress of the contractor and to manage the contractor if deliverables or contractor performance were not satisfactory, where applicable. There was consensus from ministry staff we interviewed, that they were generally satisfied with the services they were receiving.

5.0 Contract Billings and Payment

Payment Terms

While the majority of the contracts reviewed had clearly defined payment terms, we found one relatively minor contract originally included a range of hourly rates but did not define when each rate was to be used. The ministry rectified this problem in their subsequent contract by establishing only one hourly rate. We also found one contract that did not include the expected specific hourly rates or a definition of eligible expenses. In this case, the ministry relied on their reference to the RFP number on the contract to support the agreed upon payment terms rather than explicitly defining the terms in their contract.

Billings & Payment

Generally, we found payments were for services provided by the contractor. However, we identified a few exceptions:

- Payments were made to honour the verbal agreement between the province and the contractor for services requested by a ministry beyond the original contract term and where there was no modification agreement, as discussed in subsection 2.2.
- One ministry made a small payment (under \$500) for one day beyond the contract termination date.
- One ministry processed the contractor's invoice that should have contained a deduction for the contractual holdback. We noted the contractor and ministry identified the mistake and made corrections to the holdbacks on subsequent invoices.

Where possible, we compiled the names of the contractor's staff and hours invoiced for each contract during the scope period to determine any potential excessive billings by the contractor.

There were some invoices that did not specify the staff assigned to the work; as such, the population for comparison was somewhat limited. However, based on the names we did identify, we found that the hours of staff billed amongst the ministries appeared reasonable.

While we generally found the ministries' EAs and Qualified Receivers (QR) are aware of their roles and responsibilities, we noted that available training for these accountabilities varies. We found some ministries had their own training requirements for EAs while other ministry staff in the role relied on advice from their peers/coworkers.

We did identify one ministry where it appeared that for a particular contract, the EA signed as the EA and QR.

Recommendations

(4) We recommend:

- **the ministries establish appropriate mechanisms to ensure all EAs have taken, at a minimum, the mandatory EA on-line training; and**
- **the FMB remind ministries the requirement that their EAs and QRs must be separate individuals and exercise their duties independently.**

6.0 Contract Management Systems and Monitoring

Examination of a cross government contract management system was included in IAAS' recent IM/IT cross government contract review. That review recommended the Deputy Ministers Committee on Technology Transformation champion with the OCG in the development and implementation of a suitable contract management system, mandatory for all ministries. The report identified opportunities to reduce completeness risks which may help improve such things as the timeliness and completion of modification agreements as identified in our review.

Our review included a discussion with ministry staff regarding the potential for creating central repository for the collection of all government contractors' overall performance. We were informed that some information may be shared informally within ministries but this is not done on a consistent basis.

While some ministry staff thought a central database for contractors' performance evaluations was a good idea, particularly where contractors provide exceptional service or to the other extreme, where a contractor may be under investigation, some suggested caution in the use of such information. They expressed concerns that poor contractor performance evaluation may not always be due to poor services but instead poorly planned projects or working relationships with the contractor.

If a government-wide contract management system is to include such a database, the FMB should be consulted on whether the collection of evaluations for government-wide use would impede the opportunities for fair procurement practices/contracting and an unbiased negotiating process.

Given these reservations and the current absence of a formal government-wide contract management system, IAAS "Report on Cross-Government Information Technology Contracting Practices" identifies as a recommendation that:

"Financial Management Branch should add to solicitation documents a requirement to report all previous government contract work over a suitable period of time and, the right of the evaluation panel to request references to validate the contractor's reported work performance."

Implementation of this recommendation would facilitate consideration of a contractor's past performance as part of the contract award process.

Subsequent to our review, we were informed that FMB is currently reviewing the opportunities and impacts of implementing this recommendation.

Detailed Action Plan – Contract Management Review

Priority	Rec. #	Recommendations	Management Comments to be Included in Report (Action Planned or Taken)	Assigned To	Target Date
1	1.	We recommend the FMB reiterates to ministries the need and importance of signing contracts prior to their effective start dates.	The Corporate Compliance and Controls Monitoring Branch presented on this area of non-compliance at the January 2011 Procurement Council meeting. This issue will be incorporated within the Procurement and Contract Management Program (PCMP) review to support improved compliance.	FMB	Jan.28, 2011 Spring 2011
2	2.	We recommend the FMB reiterate to ministries the need and importance of signing modification agreements on a timely basis.	The importance of timely and compliant Modification Agreements will be addressed at a future Procurement Council meeting. This issue will be incorporated within the PCMP review to support improved compliance.	FMB	Spring 2011 Spring 2011
4	3.	We recommend: <ul style="list-style-type: none"> the FMB reiterate that post contract evaluations should be done on a timely basis; and evaluation forms used by the ministries should include the date and the name of the preparer. 	Compliance with existing post contract evaluations policy will be added to a future Procurement Council meeting. A review of existing post contract evaluation forms will be undertaken to identify mandatory elements and the possibility of a generic, corporate form.	FMB	Within FY 11/12 Fall, 2011
3	4.	We recommend: <ul style="list-style-type: none"> the ministries establish appropriate mechanisms to ensure all EAs have taken, at a minimum, the mandatory EA on-line training; and the FMB remind ministries the requirement that their EAs and QRs must be separate individuals and exercise their duties independently. 	Meet with Financial Operations Advisory Council (FOAC) to highlight this issue and review current practices at the ministry level. Ministries will be asked to ensure that their EA's are made aware of the mandatory online EA training and that their process for adding EA's to the system includes documentation that the EA agrees to take the online training prior to using iProcurement. Compliance with this requirement will be added to a future Procurement Council meeting and a future FOAC meeting.	FMB	Spring, 2011 Within FY 11/12