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Subject: Procurement Governance Office – Cross Government
Procurement Review Phase III

We are pleased to provide you with our report on our 2004/05 Cross Government Procurement Review project. In this project, we reviewed a judgemental sample of 84 contracts and transfer agreements from sixteen ministries and assessed the level of compliance within the four phases of procurement - planning, solicitation, award, and administration and monitoring. The timeframe of our sample was the fourteen month period, June 1, 2003 to July 31, 2004. In addition, we reviewed a further 25 contracts awarded to suppliers in our sample that were also contracted with between June 1, 2002 and May 31, 2003, and between August 1, 2004 and October 31, 2004.

The purpose of our project was to:

- continue to provide ministries and the Procurement Governance Office (PGO) with an indication of significant procurement compliance issues prevalent across government;
- continue to provide the PGO feedback on potential corporate policy revision and refinement opportunities; and
- identify best practices that are being used by ministries.

As the judgemental sampling technique does not produce statistically valid results, the results of our review can not be extrapolated to the overall contract population. However, the audit results will assist government in identifying general areas of concern for further examination and action.

Five ministries were excluded from our sample as similar contract reviews were being undertaken for the same period.

Overall Results

Overall, we found a significant improvement in documentation in contract files, due in part to a change in approach where we conducted fieldwork in some ministry offices, and to an increased understanding of our documentation requirements. In 2004/05, the frequency of insufficient documentation was reduced to 20%, compared to 41% in 2003/04. This contributed to general improvement in the rates of compliance with government policy, as audit criteria were met 63% of the time compared to 49% last year. The improved availability of documentation also contributed to an increase in the rates of non-compliance to 17% compared to 10% last year.

Ministries continued to perform well in:

- safeguarding government assets;
- not establishing employee/employer relationships; and
- payment administration.

While we found improvement over last year in all four phases of procurement, significant areas of concern remain, including:

- Inadequate planning demonstrated by the lack of cost-benefit analysis.
- Inappropriate application and inadequate documentation of direct award criteria. Only 54% of contracts examined were direct awarded with proper justification.
- Improper use of contract amendments. In some cases, this resulted in high value, multi-year agreements.
- Unclear contract deliverables creating the risk that outcomes may not be satisfactory.
- Poor documentation of contract monitoring and performance evaluation and feedback.

Planning

	2004/05	2003/04
Criteria met	60%	50%
Criteria not met	16%	6%
Unable to conclude	23%	44%
	100%	100%

The areas that continued to be well performed included the linkage of contracted activities to Service Plans, independent contractor relationship, i.e., assurance that employer/employee relationships are not established, and the identification and management of assets.

Some examples of best planning practices we found included:

- The Ministry of Human Resources developed a set of evaluation tools and templates, consulting with Procurement and Supply Services in the process.
- The Ministry of Agriculture, Food and Fisheries developed a "Contract Administration" website on the ministry intranet site for ministry staff engaged in contracting and procurement activities. The link serves as a learning tool for staff and as a control for compliance with core policy.
- The Ministries of Finance and Health Services have created versions of a "contract information checklist" that summarizes pertinent contract information. The forms reinforce the competitive selection process, serve as a control for compliance with core policy, provide for a clear and concise description of original and amended agreements, and ensure appropriate signing and date of approval. In addition the Ministry of Health Services has created a centralized Contract Manager position that provides a focal point for procurement expertise and serves as a control for compliance with policy.

Areas that continued to be of concern were:

- The absence of appropriate planning, including cost estimations and cost-benefit analysis. We found evidence of cost analysis only a quarter of the time.

- Inadequate planning of solicitation methods, to ensure contractors are not given preferential treatment resulting in unfair award practices.

Some examples of the planning problems we observed included:

- an absence of cost estimation resulting in the need for an amendment to address contractor expenses;
- three separate contracts with the same contractor that should have been awarded as a single contract where planning would have foreseen the need for additional inputs and outputs; and
- a potential contractor designed a research project proposal and was subsequently awarded the contract directly.

The newly developed "Procurement and Contract Management" Training Program includes instruction on the preparation of a cost-benefit analysis. PGO may also want to include additional guidance on the completion of cost-benefit analysis in the Core Policy and Procedures Manual (CPPM).

Recommendation:

PGO should enhance the CPPM by adding policy guidelines on the preparation of cost estimations and cost-benefit analysis.

Solicitation

	2004/05	2003/04
Criteria met	76%	54%
Criteria not met	12%	7%
Unable to conclude	12%	39%
	100%	100%

In our review of the solicitation process, the area of conflict of interest continued to be well performed.

An area which showed improved performance was the appropriate use of pre-qualified bidder processes. This may have been the result of a policy clarification issued in April 2004. The establishment and use of a pre-qualified bidders list can improve ministries' supply of qualified contractors and facilitate the timely identification of potential suppliers for use in a competitive bid.

Other examples of good solicitation processes included:

- the Ministry of Forests' established and maintained a pre-qualified bidder's list used in rotation; and
- the Ministry of Sustainable Resource Management developed a Request for Proposal that clearly outlined the responsibilities of both the contractor and project teams.

In our review, we noted some areas that continued to be of concern including failure to post Notices of Intent when required, and improper use of contract amendments resulting in multi-year agreements and agreements in excess of \$100,000.

Other areas of the solicitation process in which we noted problems included:

- Contracts which were written just under thresholds of \$50,000 or \$100,000 to avoid solicitation requirements, and later amended above those thresholds.
- The awarding of a contract exceeding \$25,000 to a contractor from a pre-qualified bidder's list rather than soliciting a minimum of three bids from the list.
- A contract valued at \$227,153 was directly awarded on the basis of sole source provider without posting a Notice of Intent to verify the justification.
- Three contracts with one supplier having the same outputs, totalling in excess of \$200,000, with each individual contract under \$100,000. This violates policy and the Agreement on Internal Trade (AIT).

Award

	2004/05	2003/04
Criteria met	60%	35%
Criteria not met	18%	5%
Unable to conclude	22%	59%
	100%	100%

While the rate of compliance improved across all areas, there remain opportunities for improvement in the consistent use of standard contract formats, the incidence of verbal contracts being established, contract splitting, adequate evaluation and selection procedures, and the appropriate use of direct awards.

Examples of some of the award weaknesses we found included:

- the use of non-Information Technology (IT) standard service contracts for IT agreements; and
- instances where the contracts started prior to being fully executed.

Direct Awards

We found that the policy on direct awards was not always followed. Our sample included 37 directly awarded contracts. We found:

- eighteen contracts met the direct award criteria,
- fourteen contracts did not meet the conditions for direct awarding, and
- five lacked sufficient documentation in the file for us to reach a conclusion.

We also found that ministries posted a Notice of Intent, ten of nineteen times, when required by policy to do so.

Inappropriate direct awards expose the government to risk of unfair award practices and jeopardizes the principles of competitiveness and value for money.

Direct Award	Under \$25K	\$25k to \$100k	Exceeding \$100k	Total
Conditions Met	1	7	10	18
Conditions Not Met	5	7	2	14
Unable to Conclude	1	2	2	5
Total	7	16	14	37

Given the risk associated with direct awards, ministries should take steps to reinforce the competitive processes.

Appropriate tools and controls that ministries could implement include:

- support from ministries' executive that competitive processes will be used in all cases unless allowed exceptional conditions are shown to exist;
- pre-approvals where explicit documentation demonstrates that the conditions for direct award are met;

- use of Pre-Qualified Bidder's Lists to streamline the competitive process;
- use of contract checklists explicitly outlining the conditions for direct award;
- provision of training to ministry staff engaged in procurement and contract management activities; and
- improved documentation on file.

Recommendation:

Ministries should have adequate controls over contract awards to ensure compliance with the direct award policy.

Administration and Monitoring

	2004/05	2003/04
Criteria met	62%	53%
Criteria not met	20%	17%
Unable to conclude	17%	30%
	100%	100%

In our review, we noted the administration and monitoring of payments, including adequate details in the Schedule B continued to be well performed.

Examples of best practices which we noted included:

- a Public Service Agency contract which clearly linked payments to the receipt of milestones and deliverables; and
- Ministry of Health Services and Ministry of Human Resources agreements clearly outlining ministry responsibilities and contractor responsibilities thereby establishing clear expectations.

Areas that continued to be of concern included the establishment of clear deliverables and performance measures, monitoring and performance feedback, and the completion of post contract evaluations on contracts exceeding \$50,000.

We found that 64 of the 84 contracts had specific and clear deliverables and 51 had reporting requirements specified in the Schedule A. Only 37 of the contracts had evidence of monitoring activities in the file. In half of the contracts, monitoring duties were not assigned to a ministry representative, nor was the frequency of performance evaluation stated.

Some examples of weaknesses noted included:

- specific roles and responsibilities had been identified in the RFP document but were not carried forward to the Schedule A;
- responsibility for monitoring was not identified in the Schedule A;
- Schedule A contained reporting requirements but lacked timeframes for reporting;
- deliverables that were input-based rather than output or outcome-focused; and
- lack of evidence of monitoring plans and activities.

The Expense Authority and i-Procurement initiatives were implemented during the time of our review. We found that ministries may require further direction with respect to the proper segregation of responsibility between Qualified Receiver (QR) and Expense Authority (EA) and their roles and responsibilities. For example, we found instances where:

- QR and EA were the same individual;
- only one signature was provided;
- the individual signing as QR may not have been the most appropriate; and
- the distinction between contract approval and approval of payments was unclear.

Recommendation:

PGO should consult with the Financial Management Branch in the identification of appropriate guidelines for Expense Authority policy.

Fiscal Year End

	2004/05	2003/04
Criteria met	77%	54%
Criteria not met	4%	3%
Unable to conclude	18%	43%
	100%	100%

IT Procurement

Our sample included fourteen IT related agreements and our review had mixed results. The average rate of compliance with criteria was 63%. Compliance with criteria ranged from a high of 100% to a low of 31%. Given the high value and complexity of IT related contracts, it is critical for ministries to:

- ensure deliverables are clearly defined;
- performance expectations and reporting are clearly stated in the terms of the agreement; and
- security issues, identification of assets, and insurance coverage are adequately addressed.

Transfers Under Agreement (STOB 80)

Our sample included 13 STOB 80 agreements. Through our review, we found that audit criteria were met 72% of the time, were not met 8% of the time, and we were unable to conclude 20% of the time.

The following table shows the comparison of STOB 80 results across the four phases, to the results of the entire sample.

STOB 80 Results

CPPM Section	% Met (total sample)	% Not Met (total sample)	% Unable to Conclude (total sample)
Planning	62 (60)	8 (16)	30 (23)
Solicitation	71 (76)	8 (12)	22 (12)
Award	58 (60)	10 (18)	32 (22)
Admin & Monitor	79 (62)	8 (20)	13 (17)
Total Average%	72 (63)	8 (17)	20 (20)

We found that STOB 80 results largely mirrored the results from the total sample, and significantly exceeded the results for administration and monitoring. We found the requirement that a third party be the recipient of services was met 100% of the time.

We also found that:

- seven of thirteen contracts showed planning to support the need for a contractor;
- five contracts had an analysis of costs and benefits;
- five of the contracts demonstrated value for money;
- six contracts matched the planned value and the actual value;
- all thirteen contracts had deliverables which were defined, measurable and attainable, had the monitoring process defined in the contract and had the fees, expenses, maximum amounts and payments due in the Schedule B;
- twelve contracts had the reporting requirements specified; and
- eleven contracts had the frequency of performance evaluation and evidence stated.

We found two ministries are using a variation of the "continuing agreement" template for contribution agreements. Their agreements contain a clause, 2.01, outlining the term which states, "Regardless of the date of execution or delivery of this agreement, the term of this agreement starts on the commencement of the first funding period and continues until ended under section 13.01". This clause is not appropriate for "non-continuing" transfers under agreements as it potentially creates a verbal agreement, increases the risk that services are being performed in the absence of a fully executed agreement, and exposes the government to financial and other risks.

Other Audit Observations

In addition to the 2004/05 cross-government procurement and payment review, Internal Audit & Advisory Services has completed or is currently undertaking contract reviews identified in five ministries' audit plans. These contracts cover the period of 2002/03 to 2003/04. Our findings and observations to date in these projects are consistent with this review.

Our findings include examples where:

- little or no planning information was on file, nor was there evidence that cost-benefit analysis or cost estimations were carried out;
- direct award processes were not adequately documented;
- inappropriate solicitation methods were used;
- amendments to agreements resulted in significant scope changes;
- unclear definition of deliverables and lack of performance expectations such as milestones;
- no evidence that monitoring was carried out and feedback to contractors was provided; and
- post-completion evaluations were not performed.

Detailed appendices are attached listing specific results by procurement phase, results by bid type, and results by risk area.

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Appendix 1: Summary of Results by Procurement Phase
Cross Government Procurement Review, 2004/05

	2003/04			2004/05			2004/05 compared to 2003/04		
	Criteria Met	Criteria Not Met	Criteria Unable to Conclude	Criteria Met	Criteria Not Met	Criteria Unable to Conclude	Criteria Met	Criteria Not Met	Criteria Unable to Conclude
	Percentage			Percentage			Percentage Change		
Planning	50	6	44	60	16	23	21	186	-47
Solicitation	54	7	39	76	12	12	42	63	-69
Awards	35	5	59	60	18	22	68	249	-62
Admin. & Monitor	53	17	30	62	20	17	17	18	-42
Fiscal Year-End	54	3	43	77	4	18	43	40	-57
Overall	49	10	41	63	17	20	28	70	-105

**Appendix 2:
Summary of Results by Bid Type - 2003/04**

**2003/04
Procurement Governance Results**

Number of Contracts	Award Process	Description of Award Type	% Criteria Met	% Criteria Not Met	% Criteria Unable to Conclude
7	102	Bidders List	47	15	38
20	104	Direct Award	45	13	42
6	106	Invitation to Quote	33	12	55
2	108	Other	33	3	64
4	109	Pre-Qualified for Consulting Contract	32	10	58
16	110	Request for Proposal	58	10	32
3	112	Tender Open Invite	86	5	9
3	501	Direct Invitation	63	7	30
5	502	Select Invitation	58	7	35
9	503	Public Advertising	48	6	47
2	504	AIT National Advertising	59	9	33
77		Aggregated for Government	49	10	41

**Appendix 2 (con't)
Summary of Results by Bid Type - 2004/05**

**2004/05
Procurement Governance Results**

Number of Contracts	Award Process	Description of Award Type	% Criteria Met	% Criteria Not Met	% Criteria Unable to Conclude
24	100	Open Competitive Process	71	12	17
1	200	Direct Award – Public Sector Organization	45	43	11
18	201	Direct Award – Sole Source	65	21	14
1	202	Direct Award – Emergency	48	19	33
4	204	Direct Award – Confidentiality	60	14	26
6	205	Direct Award – Notice of Intent	64	12	24
6	206	Direct Award – No Justification	30	34	36
3	207	Direct Award – Under \$25,000	50	47	3
6	300	Direct Invitation to Selected Vendors	69	13	18
9	400	Selected Vendor from Pre-Qualified List	66	11	24
3	401	Competition Among Vendors on a Pre-Qualified List	68	12	20
2	601	Other Continuing Agreements	62	19	20
1	602	Other – Grants and Entitlements	38	14	48
84		Aggregated for Government	63	17	20

**Appendix 3:
Summary of Results, by Risk Area, 2004/05**

Significant Procurement Policy Compliance Issues	CPM Area	CPM Section	Current PGO/PRO Risk Rating	2003/04			2004/05			2004/05 compared to 2003/04		
				Percentage			Percentage			Percentage Change		
				Criteria Met	Criteria Not Met	Criteria Unable to Conclude	Criteria Met	Criteria Not Met	Criteria Unable to Conclude	Difference Criteria Met	Difference Criteria Not Met	Difference Criteria Unable to Conclude
Policy on direct awards is not followed.	Award	6.3.3.a.1	8.4	48	11	41	56	32	12	12%	177%	-71%
Post-contract evaluations are not completed >\$50,000.	Admin & Monitor	6.3.6.c.3	7.1	12	26	62	32	35	33	166%	35%	-47%
Procurement planning is not undertaken during the program/service planning process.	Plan	6.3.1.1	6.9	44	9	47	60	12	28	37%	33%	-41%
Ministries favor or give preferential treatment to a prospective contractor.	Plan	6.3.1.10	6.2	56	1	43	60	18	22	8%	1163%	-49%
Contracts result in an employee/employer relationship.	Plan	6.3.1.6	5.8	77	2	21	90	3	7	16%	89%	-68%
A cost benefit analysis has not been prepared prior to undertaking a procurement	Plan	6.3.1.5	5.8	4	13	83	26	35	39	496%	172%	-53%
Contracts are established with unclear or incomplete contract terms	Admin & Monitor	6.3.6.c.1	5.7	63	17	20	67	24	9	6%	37%	-52%
Ministries provide government assets to contractors, or fund a contractor's asset acquisition.	Plan	6.3.1.9	5.5	80	4	16	67	23	10	-16%	461%	-36%
Contractor fails to provide all of the deliverables specified in the contract.	Admin & Monitor	6.3.6.d.1	5.3	49	16	35	60	15	25	21%	-9%	-26%
Contractor undertakes the contract work prior to the contract being in place.	Award	6.3.3.e.2	5	66	17	17	66	24	10	1%	41%	-44%
Policy on issuing a Notice of Intent for services contracts over \$50,000 is not followed.	Solicit	6.3.2.c.5	5	26	8	66	51	35	14	98%	308%	-79%

**Appendix 3: (continued)
Summary of Results, by Risk Area, 2004/05**

Significant Procurement Policy Compliance Issues	CPM Area	CPM Section	Current PGO/PRO Risk Rating	2003/04			2004/05			Percentage Change 2004/05 compared to 2003/04		
				Percentage			Percentage			Difference Criteria Met	Difference Criteria Not Met	Difference Criteria Unable to Conclude
				Criteria Met	Criteria Not Met	Criteria Unable to Conclude	Criteria Met	Criteria Not Met	Criteria Unable to Conclude			
The pre-qualification requirements specified in the solicitation document are not used to select the successful contractor(s).	Award	6.3.3.a.3	4.6	42	-	58	60	3	37	44%	0	-37%
Staff act or speak in a way that establishes a verbal contract.	Award	6.3.3.a.12	4.4	38	3	59	54	23	23	43%	574%	-61%
Risk Management Branch is not consulted re assessment plans, WCB coverage and insurance.	Info	6.4.6	4.2	3	3	94	27	27	46	840%	840%	-52%
Employee participates in a contracting decision(s) that involves a relative, spouse or cohabitant.	Solicit	6.3.2.2	4.1	65	1	34	94	-	6	44%	-100%	-83%
Standard contract formats (or alternate formats approved by Legal Services Branch) are not used for service/IT contracts.	Award	6.3.3.e.4 6.3.2.a.5	3.8	20	1	79	65	11	24	228%	632%	-69%
Process to select pre-qualified bidders is not advertised annually on BC Bid.	Solicit	6.3.2.b.4	3.6	42	3	55	64	8	28	52%	141%	-48%
Advance payments are made that are unsubstantiated or are not accountable.	Admin & Monitor	6.3.6.b.6	3.5	8	8	84	75	21	4	874%	171%	-95%
The contractor does not meet the Fiscal Year End deadline for providing the deliverables.			3.3	54	3	43	77	4	19	43%	38%	-57%
Policy on splitting contracts is not followed.	Award	6.3.3.a.2	3.1	16	15	69	42	42	16	175%	175%	-78%
Payments are made outside of the terms of the contract or are not covered in Schedule B.	Admin & Monitor	6.3.6.b.3	2.9	57	9	34	80	12	8	41%	24%	-76%
Inappropriate use of contract amendments.	Solicit	6.3.2.a.11	2.5	44	27	29	65	23	12	48%	-16%	-57%