



Travaux publics et
Services gouvernementaux
Canada

Public Works and
Government Services
Canada

Sous-ministre

Deputy Minister

Sous-receveur général
du Canada

Deputy Receiver General
for Canada

Ms. Elizabeth B. Kingston
Committee Clerk
House of Commons
Committees Directorate
Room 641
180 Wellington Street
Ottawa, Ontario
K1A 0A6

FEB 10 2005

Dear Ms. Kingston:

The purpose of this letter is to present the Public Works and Government Services Canada Report on the implementation of our action plan as a follow-up to the tabling, last spring, of the Government response to the Eighth Report, on the Canadian Health Network.

I trust that this report will be satisfactory to the Committee.

Yours sincerely,

I. David Marshall

Enclosure

**Final Report on the Implementation of the PWGSC Action Plan
in response to**

**Recommendation 4 of the Eighth Report of the Standing Committee on Public
Accounts (SCOPA), in reference to Chapter 8 of the April 2002 Report of the
Auditor General of Canada**

October 2004

1.0	Summary	.....	2
2.0	Introduction	.....	3
3.0	Findings	.....	4
4.0	Background	.....	4
5.0	Policy Issues	.....	5
5.1	ACANs	.....	5
5.2	Contract Spitting	.....	5
5.3	GETS Coding Concerns	.....	6
6.0	Monitoring Program Results	.....	7
7.0	Next Steps / Recommendations	.....	8

1.0 Summary:

In response to Chapter 8 of the 2002 Report of the Auditor General, and the subsequent Eighth Report of the Standing Committee on Public Accounts (Recommendation 4), Public Works and Government Services Canada (PWGSC) undertook to conduct a monitoring program to review all PWGSC generated Advanced Contract Award Notices (ACANs) with respect to advertising period, accurate commodity coding, sole source rationale, and proper format/content.

In addition, for all other contracts, PWGSC undertook to develop a monitoring program to address concerns relating to possible contract splitting and commodity miscoding.

The results of the ACAN monitoring program undertaken by PWGSC indicate there are no significant abuses of ACAN use under the present policy. In addition, the results indicate few instances of commodity miscoding in ACANs advertised on GETS.

As a result, PWGSC's monitoring program for ACANs was concluded on June 1, 2004.

After assessing the costs and benefits of a full monitoring program for contract splitting it was determined that a monitoring program is not cost effective. Rather PWGSC will emphasize training and integrity in the procurement process in order to effectively manage the risk of contract splitting occurrences.

.

2.0 Introduction

PWGSC has previously responded to the Standing Committee on Public Accounts with an Action Plan to address Recommendation 4 of the Eighth Report of the Standing Committee on Public Accounts (SCOPA), in reference to Chapter 8 of the April 2002 Report of the Auditor General (AG) of Canada. In that response, PWGSC indicated that effective July 1, 2003, a program would be created which would provide ongoing monitoring of contracting procedures.

The program would insure that;

- (i) All Advance Contract Award Notices (ACANs) (approximately 1800 per year) published on the Government Electronic Tendering Service (GETS) would be reviewed for compliance with the policy requirements. This would be conducted by a monitoring team, independent of the procurement staff who are responsible for the contract.
- (ii) The commodities identified in an ACAN were coded correctly and the minimum period for advertising on GETS was met, and corrections were taken prior to the award of the contract.
- (iii) Contracts would be reviewed for the possibility of contract splitting and, where concerns were raised, investigated.
- (iv) A report summarizing the monitoring program and the actions taken would be provided on a quarterly basis to the Assistant Deputy Minister (ADM) responsible for Acquisitions.

Beginning July, 2003, PWGSC reviewed all PWGSC generated ACANs. The ACANs were reviewed for the advertising period, accurate commodity coding, sole source rationale, and proper format/content. Additionally, ACANs were reviewed with respect to the possibility of being challenged. A change was implemented in the in-house tool used to create ACANs to ensure that all ACANs were advertised on GETS for a minimum of 15 days, in accordance with departmental policy.

It was also determined that the ACAN review would provide a sufficient sample to assess any concerns with respect to miscoding of procurements advertised on GETS, thus meeting objective (ii) above.

To satisfy objective (iii), a process was to be developed and validated, to identify potential situations of contract splitting.

Objective (iv) has been satisfied through the production of quarterly reports which have been submitted to the ADM Acquisitions Branch.

3.0 Findings

1. The monitoring team found that ACANs were not being misused with respect to sole source rationale, commodity coding, or advertising period. There are, however, some aspects of the in-house tool used to create and generate ACANs that may warrant improvements, so as to provide a more effective ACAN, and to minimize concerns of misuse.
2. With respect to commodity coding concerns, there does not appear to be a major problem. The ACAN monitoring team has found that miscoding rarely occurs, and even when it does happen, the error is typically due to the complexity and nature of some procurements, and the associated difficulty in placing them within a specific commodity category.
3. The monitoring of potential contract splitting is a not a simple process; one of the major challenges is the sheer number of contracts entered into each year. As a result, a program to fully contract splitting monitoring program has not been implemented.

4.0 Background

In 2002, the AG reported on the creation of the Canadian Health Network. The report noted instances where improper use of ACANs may have occurred with respect to not meeting the the conditions that would normally justify setting aside the competitive bid process . In addition, concerns were raised with respect to potential occurrences of contract splitting to avoid higher approval authorities, and to proper coding of commodities identified in an ACAN.

SCOPA considered the AG Report, and subsequently issued its Eighth Report, which included a number of recommendations. Recommendation 4, directed at PWGSC, stated that the department should develop and implement an action plan to address the issues identified in the AG report.

The Action Plan was developed and previously presented to SCOPA - the plan included commitments to: monitor procurements to identify issues related to ACAN misuse, contract splitting, and miscoding of procurements; to undertake corrective action as required; and to provide SCOPA with a final report on its monitoring activities and any related corrective action.

5.0 Policy Issues

5.1 ACANs

The purpose of the ACAN is: to post a notice to advise the supplier community that the government intends to award a contract to a pre-identified supplier; to provide an opportunity for potential suppliers to submit a Statement of Capabilities should a potential supplier believe it has the capability to respond to the requirement; and, to encourage openness and transparency in non-competitive contracting. The ACAN has been used by PWGSC since 1991.

In using an ACAN, the contracting authority must demonstrate that it has met at least one of the permitted exceptions to set aside the competitive process as per the Government Contracts Regulations (GCRs). These exceptions are:

1. Pressing emergency
2. Value of less than \$25,000
3. Not in the public interest
4. Only one person (firm) is capable of performing the work

It should be noted that based upon our review of 1737 ACANs , it was found that the vast majority are based upon exception 4 above.

Once prepared, the ACAN notice is posted on GETS, for no less than fifteen (15) calendar days.

If no other supplier submits, during the posting period, a Statement of Capabilities that meets the requirements set out in the ACAN, then the competitive requirements of the government's contracting policy are deemed to have been met, and the competitive contracting authorities apply. For example, for a noncompetitive goods procurement, a PWGSC procurement Director's level of approval authority is, in most cases, limited to \$500K; however, if an ACAN was used to openly publish the requirement on the GETS, and there was no successful challenge by a supplier, the resulting contract would be deemed competitive, and a competitive approval authority of up to \$10M would apply.

5.2 Contract Splitting

Each year, PWGSC enters into approximately 44,000 contracts. A departmental delegation of authority matrix has been established, which sets out the contracting approval and signing authorities of departmental officials and management. Procurements may not be split to avoid higher levels of approval authority, trade agreement obligations, or the requirement to solicit competitive bids. As per section 6A.001 of the PWGSC Supply Manual:

"Contracting authorities must not split contracts or contract amendments in order to avoid obtaining either the approval required by statute, the Treasury Board Contracts Directive or appropriate management approval within the department or agency."

Additionally, Subsection 11.2.7 of the Treasury Board Contracting Policy states:

"Furthermore, contracts must not be split to avoid our obligations under national or international trade agreements, or the application of our procurement policies. Contracting officers must obtain approval and signing authorities in accordance with the levels established by Treasury Board (TB) and the internal levels established by the department."

Based on the delegated contracting approval authorities within the department, including those for lower dollar value contracts, the incentive for contracting officers to split such contracts to avoid higher approval authorities is considered low. In addition, proposed contracts whose value is beyond certain thresholds must be reviewed by legal advisors and contract quality assurance staff, prior to submission for approval by senior managers. This process ensures a significant level of review with respect to higher dollar value procurements, and it is therefore highly unlikely that contract splitting could occur in these circumstances.

It is believed that existing policy and departmental guidelines are sufficiently clear on this subject, and that the best method to protect against this concern is through training, increased awareness, and continued sound management oversight of contracting officers by their supervisors. It is also worth noting that PWGSC is developing and preparing to implement measures to enhance its overall contract management framework. Although a separate initiative, we believe that any improvements to our management practices in this area will have beneficial "spin-off" effects, and further assist us in monitoring files for quality and adherence to policies and guidelines.

5.3 Commodity Coding Concerns

The Auditor General Report on the Canadian Health Network noted that there appeared to be instances of improper coding of commodities identified in an ACAN as advertised on MERX (MERX is the commercial name for the GETS).

By using GETS, contractors can search for procurements in specific commodity fields on the basis of a coding reference known as a Goods and Services Identification Number (GSIN). For example, searching under GSIN reference N6640 would generate a list of procurement opportunities involving Laboratory Equipment and Supplies. If a procurement for such equipment were coded improperly, suppliers of laboratory equipment and supplies, which were monitoring GETS strictly on the basis of that

particular GSIN (and not other GSINs, or "key word" searches), may miss that particular opportunity and not participate or bid on the procurement.

The monitoring program therefore also looked at the ACANs for accuracy of coding. The process essentially involved ensuring that the content and title of the ACAN matched the GSIN number it was posted under.

6.0 Monitoring Program Procedure and Results:

For the period July 1st, 2003 to June 1st, 2004, a total of 1737 ACANs were reviewed. Each week one member of the monitoring team would receive copies of all published ACANs. A checklist of data items was used to assess each ACAN for compliance, and the data for each field entered into a spreadsheet. The team met weekly to discuss any ACANs for which concerns had been raised.

The ACANs were classified as:

- i) acceptable;
- ii) requiring additional review due to questionable sole source rationale;
- iii) acceptable but with some concern with respect to content.

In general, ACANs published by PWGSC were found to meet the requirements of government policy and regulations. Nonetheless, some issues were identified:

1. The ACAN monitoring team found that approximately 10.6% of ACANs did not provide enough information on the posted notice to adequately justify sole sourcing, and required further investigation. This did not necessarily mean that the ACAN was not valid, but rather that justification for its use was not demonstrated adequately in the notice. In these cases, the monitoring team contacted the operations group and/or the actual contracting officer to highlight this apparent lack of detail, so that the justification could be clarified and better understood. Upon subsequent review of the clarifications provided to the monitoring team, only a small portion (approximately 1% of all ACANs) that had been published were found to have used improper justifications. Of these, half had already been challenged by the supplier community. It is also noted that the number of ACANs requiring further clarification of the sole source justification has significantly declined over the course of the monitoring program. This may partially be a result of the questioning raised through the monitoring program during this period, as well as the provision of checklists to further assist contracting staff in the preparation of ACANs. Therefore, it seems that the overall quality of ACANs with respect to sole source justification content is improving.
2. Within the 10.6% of ACANs requiring further investigation for sole source justification, the majority involved contracting for services (consultants), as

opposed to the purchasing of goods. In particular, almost 30% of ACANs for research and consulting services required further review by the monitoring team, as opposed to only 10% for all other types of services. This may be due to the inherent difficulty in justifying why only one individual or consultant firm is capable of performing work for such specialized services.

3. The review also indicated that in approximately 12% of all instances, ACANs were being used where successful challenges, through the submission of a statement of capabilities by other potential vendors, would not be possible. This was seen particularly in instances whereby the required product or service was the subject of a specific vendor's ownership of the proprietary information, or exclusive marketing rights. In these instances, a direct, noncompetitive award should have been made, and accordingly no ACAN was required. PWGSC promulgated a Policy Notification (PN-39U2) in March 2004 to remind contracting staff that an ACAN is to be published only for requirements where the government is willing to accept a Statement of Capabilities from another supplier. Contracting officers must ensure that the government is in a position to accept a Statement of Capabilities before publishing an ACAN. Since then, the numbers of ACANs posted that likely could not have challenges accepted has declined by approximately 50% (results for March to June).
4. Another concern lies with formatting, as approximately 31% of ACANs reviewed had some type of format or content issue. The majority of these issues related to information being left out, or presented in a confusing format, which made understanding of the ACAN by the monitoring team very difficult. Similarly, the definition of certain requirements often provided a wide range of information, much of it seemingly irrelevant. Finally, some of the rules associated with the templates used for the preparation of ACANs (i.e. instructions to contracting officers on how to input specific information in the ACAN) were often listed in the ACAN itself, as opposed to the information describing the actual procurement. In the second quarter of monitoring activities, however, it was noted that formatting of ACANs had begun to improve, and by the final three months of this study (March, April, May 2004) information was being provided in a much clearer fashion by contracting officers, with the number of ACANs with content/formatting concerns down to 12%.
5. G SIN coding concerns were not found to be a major problem, with only 4 occurrences identified out of the 1737 ACANs reviewed.

7.0 Next Steps/Recommendations

1. Terminate the program for ACAN monitoring and Coding Reviews effective June, 2004.