



HOUSE OF COMMONS
CANADA

**CHAPTER 3, CONTRACTING FOR PROFESSIONAL
SERVICES - PUBLIC WORKS AND GOVERNMENT
SERVICES CANADA OF THE DECEMBER 2008
REPORT OF THE AUDITOR GENERAL OF
CANADA**

**Report of the Standing Committee on
Public Accounts**

**Hon. Shawn Murphy, MP
Chair**

**DECEMBER 2009
40th PARLIAMENT, 2nd SESSION**



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THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

TWENTY-FIRST REPORT

Pursuant to its mandate under Standing Order 108(3)(g), the Committee has studied Chapter 3, Contracting for Professional Services - Public Works and Government Services Canada of the December 2008 Report of the Auditor General of Canada and has agreed to report the following:

INTRODUCTION

The federal government contracts for professional services to meet unexpected fluctuations in workload; acquire special expertise not available in the public service; and staff the positions of public servants during temporary absences. The government spends more than \$7 billion annually on professional services, with Public Works and Government Services Canada (PWGSC) spending approximately \$1 billion of that amount. Professional services include the services of accountants, lawyers, architects, engineers, translators, doctors, nurses, and other medical personnel. The government also hires management, data processing, and technical experts on contract. PWGSC uses a variety of contractual arrangements to procure goods and services. These include publicly tendered and sole source contracts, which precisely define the deliverables that are to be provided to a specific client by a specific date. PWGSC also uses standing offers, supply arrangements, task authorizations, and Professional Service Online contracts, which are procurement frameworks used for less specific or well-defined needs.

In its December 2008 Report,¹ the Office of the Auditor General (OAG) examined whether PWGSC contracting for professional services was in compliance with the appropriate legislation, regulations, and policies. The audit was limited in scope to publicly tendered and sole source contracts, and did not cover other contracting processes, such as standing offers or supply arrangements. Wanting to ensure that government contracting is carried out in a transparent, fair and timely manner, the Committee met with officials from the OAG and PWGSC on 24 March 2009. From the Office of the Auditor General, the Committee met with Sheila Fraser, the Auditor General of Canada; Ronnie Campbell, Assistant Auditor General; and Tedd Wood, Principal. PWGSC was represented by François Guimont, Deputy Minister and Deputy Receiver General for Canada; and Daphne Meredith, Associate Deputy Minister.

¹ Report of the Auditor General of Canada, "Chapter 3—Contracting for Professional Services—Public Works and Government Services Canada", December 2008 http://www.oag-bvg.gc.ca/internet/English/parl_oag_200812_03_e_31827.html

The objective of the Treasury Board Contracting Policy is to ensure that the government acquires goods and services in a manner that enhances competition and fairness, and results in the best value to the Crown and the Canadian people.

The audit examined activities from the initial identification of the requirement for a contract, to solicitation and tendering, and up to and including the awarding of the contract. The OAG further examined whether, once contracts had been awarded, they were managed and administered in compliance with appropriate legislation, policies, directives, and guidelines. Contract management and administration arises once a contract is in place, and includes the commitment of funds, the enforcement of terms and conditions, information management and reporting, amendments to the contract, and payment for work done.

The OAG's conclusions about management practices were only applicable to public servants, and did not apply to the performance and practices of the private sector contractors who were awarded the contracts.

PROGRESS REPORT

The OAG made a number of recommendations intended to improve the quality and fairness of contracting. As PWGSC has agreed with the recommendations, the Committee anticipates that they will be fully implemented.

In order to demonstrate commitment to the implementation of OAG recommendations, the Committee expects that departments prepare an action plan that details what actions will be taken in response to each recommendation agreed to by the department, specifies timelines for the completion of the actions, and identifies responsible individuals who will ensure the actions are undertaken in a prompt and effective manner.

In response to the audit, PWGSC has produced a detailed and comprehensive action plan, which it provided to the Committee prior to the hearing. This action plan indicates that PWGSC has taken prompt steps to address problems identified in the audit, as

many of the actions to be taken were completed by the time of the hearing. In order to close the accountability loop it is necessary to report on progress on implementing action plans. The Committee recommends:

RECOMMENDATION 1

That PWGSC provide an interim status report to the Public Accounts Committee on its progress in implementing its action plan by 28 February 2010.

THE AWARDING OF CONTRACTS

The audit determined that PWGSC was in overall compliance with the government's rules when awarding publicly tendered and sole source contracts for services. PWGSC awarded publicly tendered contracts in a fair and open manner, and fully complied with the applicable acts, regulations, and policies in 95 percent of the transactions sampled for the audit. For example, the OAG reviewed one contract for specialized architectural services and found that although the award process was complex, the contract file was fully documented and included explanations of the issues and the reasoning behind decisions. The audit further determined that 96 percent of the sole source contracts that were audited complied with the appropriate legislation, regulation and policies, and concluded that these contracts were awarded in a fair, open, and transparent manner. As an example, the OAG cited a contract in which the contracting officer searched a database of contractors several times, and then used broader search criteria, in an attempt to locate a contractor. All of this information was properly documented in the file.

The OAG identified some deficiencies in PWGSC contracting. In one instance PWGSC did not follow a competitive process and awarded a contract valued at over \$200,000 on a sole source basis. In another publicly tendered contract, PWGSC did not publicly post a request for bids for the required number of days, and no reasons were provided for the omission. For sole source contracts, the OAG found a lack of compliance in three

instances, because of a lack of documentation, because a procurement tool was improperly used, and because an invalid sole source justification was provided.

The Committee finds the results of the audit encouraging. The PWGSC compliance rate in awarding contracts is commendable, and the audit revealed no systemic problems in PWGSC's contracting processes. Both the management and employees of PWGSC deserve recognition for their success in ensuring that government contracting is conducted in a fair and transparent manner.

MANAGEMENT OF CONTRACTS

Although the OAG concluded that overall, contracts are awarded in a transparent manner, the audit noted that in some instances, PWGSC needed to improve the consistency with which it administers and manages contracts after they have been awarded. Contract management includes such items as the commitment of funds, the enforcement of the terms and conditions, information management and reporting, amendments to the contract, and payment for work done.

When a department chooses sole source procurement, it must fully justify its decision not to use the competitive bidding process. Sole source contracts can only be awarded without a competitive process under certain defined exceptions, either when there is an emergency situation, or when the estimated expenditure does not exceed \$25,000 (and up to \$100,000 for certain construction contracts, or when the contract pertains to international development assistance).

The OAG randomly selected a series of contracts to assess whether PWGSC's administration of contracts complied with the *Financial Administration Act*, the Treasury Board Contracting Policy, and contracting guidelines. The OAG found that although the samples it looked at did not indicate systemic weaknesses, they did highlight the inconsistent application of management controls. The OAG found an administrative deficiency or weakness of some kind in 30 of the 37 transactions examined, and believed that although no single type of problem was pervasive, the number of problems

indicated the controls were not being enforced consistently. Specifically, the OAG found that:

- the segregation of duties in managing contracts was not always maintained;
- some contract amendments did not fairly reflect the original specifications;
- PWGSC had a financial system and procedures in place but did not always control spending against contract limits;
- PWGSC did not always follow the terms and conditions of the contract; and
- some contracts created the risk of an employee-employer relationship.

The OAG made a general recommendation that PWGSC develop a framework to ensure quality and compliance, and that it address such issues as the enforcement of the terms and conditions, amendments to the contract, and payment for work done. PWGSC responded by developing the Contract Management Control Framework, which it believes will further strengthen its consistency in the administration of contracts. The Auditor General told the Committee on 24 March 2009 that her office had examined the framework, and thought that if implemented, it would make a difference in how PWGSC administers its contracts.²

The Auditor General indicated in her testimony before the Committee that she believed that the Contract Management Control Framework, if implemented, would address many of the deficiencies found in the audit. The Committee expects that PWGSC internal audit will continue to monitor implementation of the framework, and as such, will make no further recommendations at this time.

LONG TERM CONTRACTUAL ARRANGEMENTS

In their analysis on contract management, the OAG expressed particular concern over the risks of PWGSC creating employee-employer relationships, and the lack of policies in place to mitigate those risks. The audit noted that PWGSC had extensive, long-term contractual arrangements with some consultants, and that there was a corresponding risk of government liability for such things as pension, remuneration and health benefits.

² House of Commons Standing Committee on Public Accounts, 40th Parliament, 2nd Session, Meeting 11.

In its sample of 37 transactions, the OAG found 19 cases in which there were indicators of an employer/employee relationship. The audit noted that a primary reason for the use of flexible contracting practices is a lack of long term stable funding. Uncertain funding creates difficulties in staffing full time positions because managers need to certify that a secure source of funds exists before they begin the staffing process.

PWGSC said that they were aware of these risks, and that they were encountering difficulties in staffing positions, especially in information technology. The Committee understands the difficulties inherent in administering information technology contracts, which often encompass complex and highly technical government systems. Nonetheless, departmental officials need to address issues surrounding contractors spending long periods of time working on government IT systems. The Committee recommends:

RECOMMENDATION 2

That PWGSC initiate a review of its long term IT contracting policy, including issues related to the potential creation of employee/employer relationships, and provide details of its review by June 30, 2010.

INAPPROPRIATE USE OF A CONSULTANT THAT CREATED A CONFLICT OF INTEREST

In three cases, the OAG found evidence that the contractor who was awarded the contract had been involved in developing the search criteria or had written the statement of work for the contract. In one case involving a contract with CGI Information Systems and Management Consultants Inc, PWGSC used the services of a consultant to assist in developing the request for proposal, while at the same time the consultant was subcontracted with the firm that bid on and was awarded the contract.

The OAG recommended that PWGSC:

- take reasonable steps to determine whether any similar cases to the CGI Information Systems case have occurred and to ensure appropriate action has been taken;
- investigate the circumstances surrounding this particular case to ensure that lessons can be learned and are acted upon; and
- monitor the implementation of the instructions to PWGSC staff that consultants should not participate in developing any component of an RFP without the specific and written approval of the Assistant Deputy Minister.

In response, PWGSC accepted the recommendation and said that they took immediate corrective action, including the issuance of two separate directives reminding staff of their obligation to administer contracts in accordance with established contract requirements. Similar directives have been integrated in the Contract Management Control Framework to ensure implementation of best practices department-wide. In addition, PWGSC said they will take reasonable steps to determine if similar cases have occurred and, where appropriate, take corrective measures to address such cases.

The Committee notes that while the overall contracting policy and procedures for the government are set by the Treasury Board Secretariat, PWGSC has developed its own specific policies and procedures to control contracting within its authority, which are consolidated in the PWGSC supply manual. The Committee acknowledges the efforts that PWGSC has made so far in developing its Contract Management Control Framework, and is confident that the framework will reduce conflicts of interest in the management of government contracts. The Committee notes that the framework only applies to PWGSC contracting, whereas conflicts of interest in contract management may be a problem throughout the federal government. It may be constructive to establish whether the work PWGSC has done on addressing conflicts of interest could be applied to other departments within the government. The Committee recommends:

RECOMMENDATION 3

That PWGSC share its lessons learned with the Treasury Board of Canada Secretariat, and that if necessary, the Treasury Board

update its guidelines on contracting, and report to the Public Accounts Committee on its progress in addressing these issues in its interim status report.

CONCLUSION

The Committee is encouraged with the overall results of the audit, although it is important to emphasise that the OAG identified several contracts that were not compliant with the relevant legislation, regulations, and contracting policies. Canadians expect their government to adhere to rigorous standards in the expenditure of public funds. The fact that PWGSC's contracting is, with few exceptions, conducted in a fair and transparent manner should be encouraging to all Canadians. The Committee hopes that PWGSC will continue to award and administer contracts fairly and transparently in the future, and that the department's policies and best practices in contracting will serve as a model for the broader public service.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Public Works and Government Services	2009/03/24	11
François Guimont, Deputy Minister and Deputy Receiver General for Canada		
Daphne Meredith, Associate Deputy Minister		
Office of the Auditor General of Canada		
Ronnie Campbell, Assistant Auditor General		
Sheila Fraser, Auditor General of Canada		
Tedd Wood, Principal		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 11, 23, 34, 35, 37 and 40](#)) is tabled.

Respectfully submitted,

Hon. Shawn Murphy, MP

Chair