



REGIONAL CONTRACTING

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Internal Audit Branch

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GLOSSARY

Definitions have been taken from the Department of Justice Guide on Contracting, *Government Contracts Regulations*, the Treasury Board (TB) *Contracting Policy*, and the Standing Offer Index User Manual:

‘After-the-Fact’ contracting (also known as inappropriately initiated contracting) means identified work has commenced, is completed, or goods are received prior to a formal contract being awarded by a person with the delegated authority for contracting.

Call-Up: An order against a Standing Offer. A call-up does not involve any negotiations. Acceptance by the Crown of the supplier's offer is unconditional. Each call-up is a separate contract between the Crown and the supplier.

Commodity: A good or service provided by a vendor.

Competitive Contract: A contract where the process used for the solicitation of bids enhances access, competition, and fairness and assures that a reasonable and representative number of suppliers are given an opportunity to bid by giving public notice using electronic bidding methodology or traditional bidding procedures under conditions set forth by Treasury Board.

Contract-splitting: The practice of unnecessarily dividing an aggregate requirement into a number of smaller contracts; thereby, avoiding controls on the duration of assignments or contract approval authorities.

Goods Contract: A contract for the purchase of articles, commodities, equipment, goods, materials, or supplies and includes a contract for printing or for the reproduction of printed matter.

IFMS (Integrated Financial Materiel System) is a Government of Canada core version of SAP system that centralizes all purchasing operations, integrates purchasing information with

financial information, and provides for consistent processing of this data on a Department-wide basis.

Non-competitive (sole-source) Contract: Any contract for which bids were not solicited, or if bids were solicited, the conditions of a competitive contract were not met.

Service Contract: A contract for the provision of service but does not include an agreement whereby a person is employed as an officer, clerk, or employee of the Crown in Right of Canada.

Standing Offer An arrangement to provide goods or services at pre-arranged prices with set terms and conditions, and for specific periods of time, on an 'as requested' basis.

STATEMENT OF ASSURANCE

We have completed the internal audit of regional contracting for services at the Department of Justice in the British Columbia, Prairie, and Quebec regional offices. The planning and on-site examination phases of the audit were carried out between September and December 2009. The overall objectives of this audit were to review and assess the management control framework, compliance with key legislation and policies, effectiveness of departmental contracting policies and practices and the review/challenge mechanism, the management of competitive and non-competitive contracts, and the reliability of information systems for decision making.

The internal audit was conducted in accordance with the Treasury Board (TB) *Policy on Internal Audit* and the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*.¹

The audit team assessed the management control framework against criteria derived from the TB Management Accountability Framework (MAF) as well as TB audit guides.

In our professional judgment, sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on a comparison of the situations, as they existed at the time of the audit, against the audit criteria. It should be noted that the conclusions are only applicable to the areas examined.

¹ The Internal Audit Branch has not undergone an external assessment at least once in the past five years or been subject to ongoing monitoring or to periodic internal assessments of its internal audit activity that would confirm compliance with these standards.

PREAMBLE TO MANAGEMENT RESPONSES

The Government of Canada is committed to providing transparency to the general public about its contracting practices. This commitment has led to such initiatives as the creation of the Office of the Procurement Ombudsman, the Proactive Disclosure for contracts and amendments over \$10,000, and the oversight role of the Management Accountability Framework. The Department of Justice Canada participates in these initiatives and actively supports them. It must be kept in mind, however, that many of the Department's requirements are time-sensitive, given the varied nature of the legal services it provides, including litigation, and its lack of control over schedules for meeting court directions and deadlines.

Since the fall of 2009, when the audit was conducted, the Contracting Division has received some increased financial and human resources and improved its capacity to prepare and award contracts. The building of the contracting team and fulfilling the departmental contracting mandate has its challenges, notably: recruiting and retaining qualified purchasing and supply resources; providing advice to a highly decentralized organization where more than 600 employees have delegated contracting authority; focusing on strategic direction, while at the same time meeting day-to-day contracting needs; responding to parliamentary questions and access-to-information requests; and, keeping up with policy changes and participating in communities of practice.

The following management responses address the audit recommendations. We are continually working to: create and implement the necessary policy instruments; establish an effective Compliance and Monitoring Program; and, prepare and deliver training. We will also continue to find the balance with the need for clear accountability for contracting decisions and the responsiveness to meet our operational needs.

While some contracting challenges have already been addressed and improved upon, a sustained commitment to support the actions arising from the audit recommendations will result in the following: a sound contracting function, effective oversight and compliance-monitoring practices, and reliable policy instruments and enhanced training for departmental staff.

EXECUTIVE SUMMARY

Overall Opinion

In our opinion, the overall accountability framework for contracting should be strengthened through revisions to current policies, procedures and guidelines, increased training and monitoring, changes to system thresholds and improved documentation to provide adequate compliance with existing government policies and rules.

Background

In the Department of Justice, the Contracting and Materiel Management Division (CMMD) has a Department-wide mandate to provide functional direction and training to regional contracting managers and administrative officers on all matters relating to contracting, and to process service contracts valued at over \$25,000. Contracting units in the regions manage contracts under \$25,000. In a memorandum of January 24, 2007, the Deputy Minister restricted regional contracting delegations so that service contracts between \$10,000 and \$25,000 could only be approved by a Regional Contracts Review Committee (RCRC).

The scope of the audit included the contracting activities of the British Columbia, Prairie, and Quebec regional offices and examined service contracts in fiscal years 2007-08 and 2008-09, a period during which 1,545 contracts were let with a value of \$5,916,804. The examination focused on contracts greater than \$2,000, of which there were 660, accounting for 89% of the total dollar amount contracted for the three regions.

The overall objective of the audit was to examine and assess the framework within which regional contracting activity is managed and to assess the extent to which contracting activities are in compliance with government policies and rules.

Planning

There is a lack of planning of contracting activities to address the forecasted needs for services of the three regions under review. We found that, as a result, litigation-related services such as printing, court reporting, transcription, and process servers are often not procured in compliance with contracting rules and regulations. The majority of invoices for these services were either being paid without a contract, or contracts were being created after the invoice had arrived. Adequate planning in relation to contracting activities needs to be undertaken at the regional level.

Organizing and Directing

Personnel in the PRO and BCRO regions who carry out contracting under their RCRC's authority do not have the capability to finalize or release these contracts in IFMS. They must obtain CMMD approval to release contracts over \$10,000. This has resulted in delays (up to six months in one region) in finalizing contracts and may have exacerbated compliance issues observed during the audit. There is a need to consider assigning regional contracting personnel appropriate capability in IFMS to release contracts that fall within the authority of their RCRC.

Furthermore, there is a need to strengthen the accountability framework to address risks identified in relation to IFMS roles. Regional Corporate Services is responsible for the following in IFMS: creating and inputting contracts, performing 'goods receipt', capturing and recording related data, and making payments. The Department has not segregated roles related to contract creation and goods receipt in IFMS, and does not have an effective verification framework for financial transactions executed in IFMS by Regional Corporate Services. It is the audit team's opinion that an enhanced accountability framework, which could include independent monitoring, is required and this would help mitigate exposure to risks.

Monitoring

While the Department monitors contracts over \$10,000, it is not monitoring contracting activity under \$10,000 to determine the extent of compliance with policies and procedures. Contract activity between \$2,000 and \$10,000 in the three regions visited represented a significant portion of total contracting dollars. From our examination of contract files, we found that a number of contracts showed concentration to certain vendors, lack of contracts, and purchase orders created after invoices arrived for work already completed. Interviews with CMMD contracting personnel revealed that they were not focusing on these occurrences and the underlying causes.

Similarly, audit analysis of data from the accounts payable module of IFMS for the audit period identified that significant numbers of payments were made without reference to a contract for the largest contracted services expenses (i.e. printing, process servers, court reporters, and transcription). Interviews with CMMD contracting personnel indicated that during the audit period payments without reference were not monitored. We were told that CMMD is in the process of developing a policy and monitoring capability.

The lack of monitoring of contracting activity under \$10,000 and for payments without reference is a risk that the Department needs to address.

Policies and Procedures

Two departmental sources of contracting and procurement information available to regional contracting personnel are the Department of Justice IFMS ver. 4.7 Training Guide (provided by SAP) and the Guide on Contracting, which also refers to *Government Contracts Regulations*, *TB Contracting Policy*, the trade agreements, and the *Financial Administration Act*. The Guide on Contracting has dedicated significant attention to providing information on unacceptable contracting practices, but has provided limited information and guidelines on how to conduct appropriate contracting practices that comply with applicable government legislation, policies, and regulations.

For example, more information is required on how to deal with contracting situations where multiple responsibility centres, funds, and projects would incur costs from a single vendor. A single contract cannot be created in IFMS because the exact amount to be incurred by each responsibility centre or project cannot be foreseen at the time the contract begins. Personnel from the Systems Section in the CFO Branch at headquarters indicated that the IFMS solution for this situation is to use an Outline Agreement. An Outline Agreement treats the contract as a form of Standing Offer or Supply Arrangement, where various responsibility centres or projects can draw down the value of the contract using call-ups against the Outline Agreement.

The audit team observed that neither the IFMS Training Manual nor the departmental Guide on Contracting cross-references standing offers and supply arrangements to IFMS outline agreements (SAP terminology) or provides any information on how to handle this procurement situation.

Departmental guides need to address all unacceptable contracting practices and include more information on appropriate contracting and procurement practices.

Regional Contracts Review Committees

Regional Contracts Review Committees have not been appropriately exercising their stewardship responsibilities. In order for the RCRCs to be effective, they must review and challenge all contracting activity that falls within their approval authority in accordance with applicable contracting policies and procedures. Furthermore, the RCRC members must be knowledgeable of contracting policies and procedures, particularly the distinctions between sole-source and competitive contracting, as well as the documentation and information required to support both types of contracts.

Reporting and Quality of Information for Management Decision Making

Contracting information in IFMS is not complete, accurate, or timely. All departments awarding contracts are required to submit an annual report to the Treasury Board Secretariat on contracting activities. Accordingly, the Department collects statistics on each procurement type from contract coding information extracted from IFMS. The audit identified that two multi-year, multi-million dollar contracts for printing were not recorded in IFMS and the payments did not reference these contracts. Furthermore, our review of randomly selected contract files identified that the majority of these contracts were ‘after-the-fact’ and not signed by the vendor, indicating that purchase orders were created in IFMS solely for the purpose of being able to pay the invoices. With regard to several of these cases, which were for printing, the purchase orders were created at the time of payment and the payments were made several months after some of the print jobs had been completed.

Requirements Definition

Work requirements were not consistently defined and documented in contracts prior to the start of the contracting process. Most contract files we reviewed were missing a Contract Initiation Document (outlining the work required) as well as the Statement of Work provided to the vendor (in advance of the work to be done). While expenditure initiation authorizations were found in almost all the files in the sample, in many cases these approvals were completed *after* the work was completed.

Procurement Strategy

Significant portions of regional contracting activity involve ‘after-the-fact’ contracting, contract-splitting, and sole-source contracting. For example, in 61 percent of files reviewed, work was invoiced before the contract was awarded or entered into IFMS; of the total 660 contracts over \$2,000 awarded by the three regions in 2007-09, 14.7 percent showed evidence of contract

splitting; and in only 4 percent of files reviewed was work awarded through a competitive process.

Solicitation Activities

Contracting files in the three regions audited lacked documented support to indicate that solicitation activities and decisions had been conducted in a transparent manner. We found that most files did not record any information on the means by which the Department initially found the vendor (e.g. from previous use, the Yellow Pages, Google search) or any information on the vendor, such as a company profile, or the vendor's qualifications to perform the work. Furthermore, two-thirds of the contract files did not record justifications for sole-source contracts.

Contract Award Process

The regions audited are not capturing and retaining key Standing Offer documentation for service contracts. Of the files sampled, none contained Standing Offer information or documentation that is essential to support and validate appropriate and timely application of contracting terms and conditions.

Also, improvements are required in documenting and recording contract award activities and decisions in IFMS and regional contracting files. We found that most contract files that were coded in IFMS and regional files as competitive contracts were actually awarded on a sole-source basis. Competitively awarded contract files were missing information about unsuccessful bidders, bid evaluations, or documentation explaining why the lowest priced bid was not selected. Furthermore, many files in our sample that indicated that the vendor's personnel would require access to departmental facilities or classified information were missing documentation on security clearances.

Contract Payment

Service contract payments are generally made in compliance with contract requirements. The audit team found proper FAA Section 34 approval in 58 of 62 files (93%) where work was invoiced against the contract during the audit period.

Evaluation of Contract Performance

Contractor (or vendor) performance should be evaluated at the completion of each contract. We found that none of the contracted vendors in our file examination was formally evaluated.

The management responses to the recommendations contained in this report were provided by the Director General, Administration Directorate and the Chief Financial Officer, Chief Financial Officer Branch.

1. INTRODUCTION

1.1 Background

In the Department of Justice, the Contracting and Materiel Management Division (CMMD) in the Administration Directorate at headquarters has a Department-wide mandate to provide functional direction and training for managers and administrative officers on all matters relating to contracting, and to process service contracts valued at over \$25,000. Contracting units in the regions manage contracts under \$25,000. On January 24, 2007 the Deputy Minister issued a memorandum restricting regional contracting authorities to:

- service contracts under \$10,000;
- service contracts under \$25,000 that have been approved by a Regional Contracts Review Committee;
- procurement through a Standing Offer arrangement under \$40,000.

Contracting groups in the regions are located within the regional corporate services functions, which are known as Corporate Services in British Columbia, Finance and Administration in the Prairie, and Financial Services in Quebec. For simplicity, this group is always referred to as Regional Corporate Services. The term 'regional contracting', which is used throughout the report, is applied as a consistent reference for the various contracting groups within the regional corporate services groups.

This audit focused on three regions and examined service contracts in fiscal years 2007-08 and 2008-09, a period during which 1,545 contracts were let with a value of \$5,916,804. To conduct our examination, we chose a random statistical sample of contracts from the 660 service contracts that were (1) over \$2,000, (2) not awarded by PWGSC, and (3) not expert witness or Crown counsel contracts. These contracts accounted for 89 percent of the total dollar amount contracted for in the three regions under review during fiscal years 2007-08 and 2008-09.

The key risk factors that were considered in relation to this audit entity included: compliance with Treasury Board (TB) and Public Works and Government Services Canada (PWGSC) rules

with respect to contracting and DOJ policy and guidelines; appropriateness of linkages with headquarters contracting staff; the level of functional guidance received from headquarters; the level of understanding among regional staff of the contracting requirements; and the appropriateness of monitoring and control measures being applied. Other key risk factors identified by management included maintenance of documentation to support decisions taken by regional contracting, as well as the quality of contracting information.

1.2 Audit Objectives

The overall objective of this audit was to examine and assess the framework within which regional contracting activity is managed and the extent to which contracting activities are in compliance with government policies and rules.

1.3 Audit Scope

The audit focused on:

- a) the management control framework for the contracting function including processes and practices related to planning, organizing, controlling, directing, communicating, and the management of human, financial, and materiel resources;
- b) the Department's contracting policies and practices and the review/challenge mechanisms, including the Regional Contracts Review Committee;
- c) the reliability of information contained in systems for decision making;
- d) compliance with *Government Contracts Regulations*, TB policies, and PWGSC policies and rules pertaining to contracting;
- e) the management of competitive and non-competitive contracts, from the selection of suppliers to the monitoring of work (including the receipt of deliverables and payment of invoices).

The audit included the operations and activities of the British Columbia, Prairie, and Quebec regional offices with respect to contracting (excluding Legal Agent appointments, expert witnesses, and contracting for goods).² In the Prairie Region, the audit focused on contracting activities related to the Edmonton Office. The file review and analysis of contracting activity in all three regions focused on purchase orders over \$2,000.

The planning and on-site examination for this audit was carried out between September and December 2009. Details on the audit methodology employed are in Appendix B.

² While goods contracts typically include printing, because the majority of Department of Justice printing contracts are coded as service contracts, printing contracts were included in the scope of the audit.

2. OBSERVATIONS – MANAGEMENT FRAMEWORK

2.1 Planning

There is a lack of planning of contracting activities to address the forecasted needs for services of the three regions under review.

Planning of contracting activities should ensure that appropriate contracting arrangements are established to address the forecasted services needs of the regions. Appropriate planning would identify the contracted services that the regions use the most and ensure that procurement activities are initiated before the need for the services arises. In some cases, elaborate contracting activities may need to be established, including competitive processes, multi-year contracts with several vendors, or standing offers and supply arrangements established by PWGSC.

From our interviews with counsel and management from the legal portfolios in the regions, we identified that the portfolios know at the beginning of the fiscal year that significant amounts of contracted services will be required from specific vendors for printing, court reporting, transcription, and process servers (sheriff and bailiff). These interviews indicated that the quantity, timing, and vendor(s) the regional portfolios need for each specific service requirement are often not determined until the last minute, due to decisions made by the courts or opposing counsel. As a result, vendors are often requested to provide these services on very short notice. However, regional contracting employees indicated that neither CMMD at headquarters nor regional contracting conducts planning to forecast the requirements for these services to create timely, open, and transparent arrangements with vendors. As a result, each region undertakes a different approach for contracting these services, with contract processes occurring in advance for some services but not for others.

The audit team also found that, because of a lack of planning, the above litigation-related services are often not procured in compliance with contracting rules and regulations. (See Management of Contracts and Compliance with Policies section of this report.)

Specific findings on planning for printing, court reporting, transcription, and process server services follow:

Printing

- The British Columbia Regional Office (BCRO) has conducted planning to address the printing needs of the BCRO's legal portfolios. The region issued a requisition to PWGSC, which competitively awarded a multi-year, multi-million dollar contract. This contract was planned to reflect the quantity and quality of printing that the region had forecasted for the contract period for all the legal portfolios.
- The Quebec Regional Office (QRO) uses a Standing Offer established in advance through PWGSC for printing services.
- The Prairie Regional Office (PRO) in Edmonton has not conducted any planning for contracting activities related to printing. As a result, no contract exists for printing services. Purchase orders are generated after invoices are received from the printer. Interviews in the Edmonton Office indicated that there is uncertainty as to what the final costs of print jobs will be. The PRO spent \$426,032 on printing between April 2007 and March 2009.

It should be noted that contracting arrangements that address forecasted requirements are especially important for printing because printing services represent the largest percentage of the regional O&M budget for litigation-related contracted services.

Court Reporting and Transcription

- In Edmonton, regional contracting has conducted planning for contracted court reporting and transcription services. The Tax Law Portfolio, for example, forecasts the needs for these services and obtains price lists from some of the major suppliers before the beginning of the year. Contracts have been created to address these needs for an entire year.
- In the BCRO and QRO, planning for service contract activities has not occurred. As a result, although these two regions spent \$933,654 on court reporting and transcription services during fiscal years 2007-08 and 2008-09, contracts were typically not set up. In the QRO, invoices often referenced a Purchase Order even though no contract existed. In the BCRO, invoices were not found to reference purchase orders.

Process Server (Sheriff/Bailiff)

The three regions visited were not conducting planning for contracting activity for process server (sheriff and bailiff) services. As a result, the audit team found that contracts have not been established for 97 percent of process server expenses in any of the regions in the past two fiscal

years (2007-08 and 2008-09). For example, in the QRO, no contracts have been set up with vendors. While in the QRO 63 different vendors were used during the audit period, one vendor accounted for 87.5 percent, or \$295,677, of these expenses between April 2007 and March 2009.

The following tables identify expenses for printing, court reporting, transcription, and process server services as a percentage of total O&M expenses incurred by the three regions under review from April 1, 2007 through March 31, 2009.

Expenses by Region				
Fiscal Years April 1, 2007 to March 31, 2009				
Account	BC	Prairie	Quebec	Total
Printing (All, incl Repro of Legal Docs)	\$ 1,740,516	\$ 426,032	\$ 405,172	\$ 2,571,720
Court Reporters	127,987	217,552	340,735	686,273
Transcripts	428,931	128,170	20,139	577,241
Sheriff/Bailiff	71,620	73,986	337,297	482,903

Largest Total Expenses for the Three Regions		
Fiscal Years April 1, 2007 to March 31, 2009		
Account	Total	Percentage
Printing (All, incl Repro of Legal Docs)	\$ 2,571,720	11.0%
Fees to Law Societies	2,055,592	8.8%
Subscriptions	1,969,851	8.4%
On-line enquiry	1,551,279	6.6%
Office Stationery & Supplies	1,506,075	6.4%
Telephone Services - Common Carriers	1,380,580	5.9%
Expert Witnesses	1,300,237	5.6%
Training & Development for staff	846,393	3.6%
Court Reporters	686,273	2.9%
Transcripts	577,241	2.5%
Rental of Photocopiers	550,861	2.4%
Sheriff/Bailiff	482,903	2.1%
Other Expenses (each being less than 2% of total)	7,557,919	33.8%
Total O&M accounts (non-travel)	\$ 23,036,923	100%

Regional counsel and management would benefit significantly from having contracting arrangements, including standing offers or outline agreements, set up with service providers for litigation-related services at the beginning of the year. These arrangements should include pre-established prices, rates, and terms and conditions. Contracted services could then be promptly and cost-effectively obtained in an open, transparent, and efficient manner as business needs arise.

Recommendation and Management Response

1. It is recommended that the Director General, Administration Directorate, in conjunction with the regional directors of Corporate Services, ensure that adequate planning in relation to contracting activities is undertaken at the regional level. (Medium risk)³

Agreed. The Director General, Administration Directorate will align procurement planning to business and investment planning in the Regions and at Headquarters. Target date September 2012.

Given the varied nature of the legal services provided by the Department and its lack of control over schedules to meet court-imposed directions and deadlines, many requirements, such as the litigation services mentioned in the audit, are time-sensitive. The Administration Directorate will award a number of multi-year procurement vehicles to meet recurring requirements such as printing, court reporting, transcription, and process servers. Use of these procurement vehicles will be mandatory for all clients. Target Date February 2012.

2.2 Organizing and Directing

2.2.1 Regional Contracting Authorities

Some regions do not have the capability to finalize contracts that fall within the approval authority of the Regional Contracts Review Committees.

The January 24, 2007 memorandum from the Deputy Minister provides Regional Contracts Review Committees (RCRCs) with the authority to approve service contracts between \$10,000 and \$25,000. However, we found that personnel in the PRO and BCRO⁴ who carry out contracting under their RCRC's authority (e.g. regional managers, contracting personnel, administration staff) do not have the capability⁵ to finalize or release these contracts in IFMS. (Contracts must be released in order for a hard copy of the contract to be printed for signatures and payment.) In order for a contract that is within the RCRCs' approval authority to be released, regional contracting personnel must send a request to CMMD personnel in HQ who have the capability to release a contract in IFMS.

³ The Risk Assessment Guidelines for Audit Recommendations are found in Appendix C.

⁴ Note that since Feb 2009 (just prior to the end of the audit) Quebec has had the capability to finalize contracts over \$10,000.

⁵ Regional personnel have not been assigned the appropriate IFMS user profiles to release contracts between \$10,000 and \$25,000. A user profile is a collection of system permissions to perform certain functions assigned for a given position.

The inability of regional contracting to release contracts has resulted in delays and may have exacerbated compliance issues observed during the audit. For example, during the fieldwork phase of the audit, we were told that the RCRC in the PRO had approved two contracts for court reporters, as well as a contract for a process server, all of which were under \$25,000. PRO regional contracting was unable to finalize the contracts as it lacked the capability and was required to seek CMMD approval to release the contracts in IFMS. On March 18, 2009, PRO contracting personnel e-mailed CMMD requesting approval of the three contracts. It was not until September 2009 that CMMD approved these three contracts.

It is the audit team's opinion that regional contracting personnel should be provided with the appropriate capability in IFMS (i.e. user profiles) to release contracts that fall within the authority of the RCRCs.

Recommendation and Management Response

2. It is recommended that the Director General, Administration Directorate, discuss with the Chief Financial Officer the need to assign appropriate capability in IFMS to release contracts that fall within the authority of the Regional Contracts Review Committees. (Medium risk)

Agreed. The Administration Directorate and the Chief Financial Officer (CFO) Branch discussed the issue, and adjusted release mechanisms in IFMS in August 2010 to allow individuals to exercise appropriate release strategy according to their contracting delegation. As well, a revised Delegated Financial Signing Authorities Chart was approved in January 2010. This new chart and its supporting notes detail contracting authorities in a clear, concise manner. Completed.

2.2.2 Concentration of Responsibilities in Regional Corporate Services

There is a need to strengthen the accountability framework to address the risks identified in relation to IFMS roles in Regional Corporate Services.

In each of the three regions visited, Regional Corporate Services has responsibility for contracting activities. Regional Corporate Services also has exclusive responsibility for inputting contract data into IFMS. Specific roles and responsibilities for contracting and payment activity in Regional Corporate Services are as follows:

- *Responsibility centre managers* certify commitment of funds when they sign contracts for the Department under the *Financial Administration Act* (FAA) Section 32.
- *Contracting specialists* (officers and clerks) create contracts in IFMS, perform ‘goods receipt’, and draw down⁶ invoiced amounts from available balances under contracts (i.e. record contract activity in the IFMS procurement model).
- *Responsibility centre managers* certify the provision of services under FAA Section 34 by signing the invoice.
- *Financial specialists (clerks) in Regional Corporate Services* input invoices for payment in IFMS based on FAA Section 34 certification of managers, goods receipt validation provided by contracting specialists, and supporting documentation.
- *Financial officers in Regional Corporate Services* approve these transactions under FAA Section 33 in IFMS.

There is a risk to the Department when regional contracting specialists:

- create and input contracts into IFMS;
- recognize goods receipt or services rendered (i.e. indicate that what was received is the same as what was invoiced) in IFMS.

The Treasury Board Directive on Delegation of Financial Authorities for Disbursements states that the following functions must be kept separate:

- authority to enter into a contract (transaction authority);
- certification of the receipt of goods and the provision of services according to Section 34 of the FAA (certification authority);
- determination of entitlement, verification of accounts, and preparation of requisitions for payment or settlement according to Section 34 of the FAA (certification authority);
- certification of requisitions for payment or settlement according to Section 33 of the FAA (payment authority);
- if the process or other circumstances do not allow such separations of duties as identified above, alternate control measures are implemented and documented.

It should be noted that with respect to the paper business process, the audit team found that responsibility centre managers recognize goods receipt when they certify invoices under FAA, Section 34. However, in our view, this does not adequately address the issues noted above with respect to segregation of duties in IFMS. We note that in a number of other federal government departments, responsibility centre personnel recognize goods receipt in IFMS.

⁶ “Draw down” means to reduce the available balance of the value of the contract by the invoice amount.

The IFMS Security Monitoring Procedures Guide, Section 5.1.3 states that the ability for the same user to both create contracts and perform goods receipt in IFMS is “considered a high financial risk to the organization”. The guide’s segregation of duties matrix identifies that one of the risks is that “unauthorized purchase orders may be entered and subsequently incorrectly accounted for in the goods receipt”.

Furthermore, the IFMS Security Monitoring Procedures Guide (PWGSC), Section 5.1 refers to three key design concepts required for segregation of duties to support an appropriate internal control environment:

1. Roles must be designed so that access granted by a single role does not pose a segregation of duties risk.
2. Roles must be assigned to users in a manner that supports appropriate segregation of duties.
3. If segregation of duties is not possible, the business owner must resolve the risk in one of two ways:
 - a) reassign job duties among departmental positions to ensure that no single user has a high-risk combination of job tasks;
 - b) implement business monitoring controls or other compensating controls should a reassignment of tasks not be feasible, such as in small offices. (Compensating controls could include the review of master data change reports, the review of transactions, etc.)

The guide further states that organizations should balance the cost of the control relative to the risk and amount of potential loss.

During our site visits we found that there were no basic monitoring controls or additional controls to compensate for the segregation risk. For example, financial specialists in Regional Corporate Services were not verifying the contracting and financial activities created by the contracting specialists in IFMS on behalf of the responsibility centres. Instead, financial specialists were focused on inputting invoice information into IFMS for payment. Financial specialists relied only on the manager’s signature under FAA Section 34 and the contracting specialist’s contracting information that these financial transactions were valid. An important point to note is that we found that contracting specialists often created contracts in IFMS and goods receipted activity after vendors had sent their invoices to Regional Corporate Services. These activities resulted in inappropriate contracting data in IFMS. Notwithstanding the control weaknesses identified, the audit found a very high level of accuracy for certain financial data in IFMS. From our random and judgmental samples of 145 contracts and corresponding payments,

we found only three situations where a transaction was not correctly coded to the accurate general ledger account in IFMS.

The Financial Officer's role under FAA Section 33 serves as an important control in assuring the quality of account verification performed by responsibility centre managers and financial specialists. This control was compromised because financial officers in Regional Corporate Services approved payments for which there was no acceptable contract.

There is a Monitoring and Quality Assurance Division at headquarters, under the Chief Financial Officer (CFO) Branch, whose responsibilities include the ongoing assessment of the Department's internal controls over financial reporting using a risk-based approach. This includes monitoring remediation action required based on audits, management letters, and other assessments, and testing travel and hospitality transactions on a statistical sample basis. We note that transactions that would generally involve contracts were not examined by the Monitoring and Quality Assurance Division during the audit period.

In our view, the accountability framework needs to be strengthened to ensure proper controls exist. This is important because the audit found that Regional Corporate Services does the following in IFMS: creates and inputs contracts, performs goods receipt, captures and records related data, and makes payments. The Department has not segregated roles related to contract creation and goods receipt in IFMS, and does not have an effective verification framework for financial transactions executed in IFMS by Regional Corporate Services. It is the audit team's opinion that an enhanced accountability framework, which could include independent monitoring, is required and would help mitigate exposure to risks.

Recommendation and Management Response

3. It is recommended that the Chief Financial Officer, in conjunction with the Director General, Administration Directorate and regional directors general, strengthen the accountability framework to address risks identified in relation to IFMS roles. (Medium risk)

Agreed. Business processes at both Headquarters and regional levels are being re-examined, with a view to enhancing the accountability framework and strengthening compensating controls. More specifically:

- At the regional level, the CFO, in conjunction with the Director General, Administration Directorate, and the regional directors general, is addressing the need to ensure compliance with contracting and financial policies and practices. This

includes reviewing Regional Corporate Services’ understanding and application of its roles and responsibilities, and assessing existing mitigation strategies and whether others need to be put in place due to conflicting roles in either the business process or the IFMS environment. Various approaches will be used, including discussions with regional finance directors, teleconferences, national meetings, on-site visits by Headquarters, and training. A collaborative action plan and reporting governance will be developed and implemented by the CFO, the Director General, Administration Directorate and the regional directors general by October 31, 2011.

- At headquarters, the CFO will introduce and expand monitoring activities as compensating controls in order to mitigate exposure to risks such as those identified with respect to segregation of duties in IFMS. These monitoring activities will be defined and in place by November 30, 2011. Findings will be communicated to the appropriate levels of management, and any remedial actions determined in consultation with the regional directors general (RDG).

These activities are being performed with the tools and resources currently available. The “Procure 2 Pay” re-engineering project will provide additional opportunities from which to strengthen internal controls, subject to approval of the project as a priority within the investment planning exercise.

2.3 Monitoring

2.3.1 Contracting Activity over \$10,000

The Department monitors contracts over \$10,000.

Interviews with personnel who undertake contracting and finance functions in the regions and at headquarters identified that monitoring of contracting activity is limited to contracts over \$10,000 for the purposes of the proactive disclosure requirements. A CMMD contracting officer prepares a report from the IFMS procurement module (of contracting activity over \$10,000) and distributes this report to Regional Corporate Services for a confirmation of its completeness and accuracy. In addition, CMMD analyzes the report to detect instances of contract-splitting and after-the-fact contracting, and to identify contracts with new vendors or other atypical contracting arrangements for follow-up with the regions. CMMD in headquarters also reviews samples of files for contracts over \$10,000.

It is the audit team's opinion that the Department has a monitoring framework for contracts over \$10,000.

2.3.2 Contracting Activity under \$10,000

The Department is not monitoring contracting activity under \$10,000 to determine the extent of compliance with policies and procedures.

The Department is not monitoring contracts or purchase orders under \$10,000, either at a Department-wide or regional level. The audit team analyzed contracts between \$2,000 and \$10,000 and identified the following:

- In the BCRO, 44 of 258 purchase orders (17.6%) were with two vendors for warehousing and furniture installation. Most of these were after-the-fact contracts.
- In the PRO, 48 of the 250 purchase orders (19.2%) were with one vendor for printing. These 48 purchase orders were coded as 'competitive'. However, regional contracting personnel identified that there were no contracts with this vendor. Purchase orders were created after invoices arrived for work that was already completed.

Interviews with CMMD contracting personnel revealed that they are not focusing on these occurrences and the underlying causes. Contract activity between \$2,000 and \$10,000 in the three regions visited represented 42 percent of total contracting dollars.

2.3.3 Payments without Reference to a Contract

The Department is not reviewing "payments without reference to a Purchase Order" to detect payments to vendors without contracts.

The Department has instituted system edits in IFMS for certain combinations of General Ledger codes and dollar thresholds, so that payments in IFMS cannot be processed without a valid purchase order (i.e. a contract). Certain low-dollar transactions and transactions related to recoverable expenses do not require references to purchase orders or contracts.

Audit analysis of data from the accounts payable module of IFMS for the audit period identified that significant numbers of payments (78.6%) were made without reference to a contract for the largest contracted services expenses (i.e. printing, process servers, court reporters, and transcription) (amounting to \$3,409,889 out of \$4,339,005 for the three regions audited).

The IFMS expenditure module also identified that 87 percent of 23,166 lines of coding associated with the above four largest services expenses were payments without reference to a contract for the three regions audited. This is a trend that CMMD could easily identify.

Interviews with CMMD contracting personnel indicated that during the audit period payments without reference were not monitored on a Department-wide basis. We were told that CMMD is in the process of developing a monitoring capability. IFMS produces a report that shows all payments without reference. Unfortunately, this report includes significant amounts of non-vendor activity, such as travel expenses through the government provider, which makes it more difficult to detect payments without reference where a contract reference should exist.

In 2004, PWGSC awarded a \$5,000,000 printing contract on behalf of the BCRO. The contract was in effect during the audit review period (between April 2007 and March 2009). In 2009, PWGSC awarded another multi-million dollar printing contract on behalf of the BCRO. Neither contract was recorded in the IFMS procurement module. While the region corresponded with a CMMD manager concerning the creation of the latter contract, during our interviews with senior CMMD management we were told that they had not been made aware of either contract.

It is the audit team's opinion that the lack of monitoring of contracting activity under \$10,000 and lack of guidance for payments without reference to a contract is a risk that the Department needs to address.

Recommendations and Management Responses

4. It is recommended that the Director General, Administration Directorate, monitor contracting activity under \$10,000, including the sampling of contract files, to determine the extent of compliance with policies and procedures. (Medium risk)

Agreed. The Director General, Administration Directorate, will implement a Compliance and Monitoring Program. The Program will consist of a pre-award review for contracts over a predetermined value or for sensitive files. There will also be a post-contract award compliance review based on a target percentage of contracts within predetermined value ranges – for example, up to five percent of contracts valued between \$1,000 and \$10,000 will be subject to annual review. There will be ad hoc targeted reviews based on commodities as determined by the Director of Contracting and Materiel Management. These activities will support recommendations 4, 5, 6, 8, 10, 11, 12, 13 and 14. The Assistant Deputy Minister of the Management Sector has provided resources to support this activity. Target Date February 2012.

The Department will develop training to address the processes, procedures and coding requirements for contracting, which will support recommendations 4, 6, 7, 10, 11, 12, 13, 14 and 15. The Assistant Deputy Minister of the Management Sector has provided resources to support this activity. Target Date December 2012.

The Department will also create a series of policy instruments to improve procurement planning and compliance, which will support recommendations 4, 10, 11, 12, 14 and 15. The Assistant Deputy Minister of the Management Sector has provided resources to support this activity. Target Date February 2012.

5. It is recommended that the Director General, Administration Directorate, in conjunction with the Chief Financial Officer, ensure that payments without reference are reviewed to detect payments to vendors without contracts. (Medium risk)

Agreed. The Compliance and Monitoring Program will include reviews of payment without reference. Target Date February 2012.

A directive on payment without reference and related bulletins will clarify when such payments are acceptable. Completed.

In support of responsibilities under Section 33 of the FAA, Accounting Operations, CFO Branch, issued a bulletin providing regional accounting units with further guidance on the verification and review of payments without reference. Completed.

The Administration Directorate and the CFO Branch have also discussed how best to exchange information on the results of their reviews of payments without reference, as well as any findings of non-compliance, and have implemented a protocol. Completed.

2.4 Policies and Procedures

Departmental guides do not provide sufficient information on contracting and procurement practices for the main contracting activities of the regions.

In order for regional contracting staff to appropriately exercise their responsibilities, it is important for them to have complete, accurate, and up-to-date information on departmental policies and procedures. Two formal sources of contracting and procurement information available to regional contracting personnel are the Department of Justice Guide on Contracting

(available on JusNet) and the IFMS ver. 4.7 Training Guide. These guides provide information that is consistent with applicable government policies and regulations related to contracting. The information should be sufficient to ensure that all parties involved in contracting are fully aware of their roles and responsibilities and are able to competently exercise their duties. The audit team observed significant gaps and discrepancies in the information these guides provide.

One discrepancy is the IFMS Training Guide’s direction to create printing contracts in IFMS just under the department’s delegation limit. This guide lists as ‘helpful hints’ for printing contracts in Tab 11, on page 1:

- We suggest that you create a purchasing document up to a maximum of \$9,345 at the beginning of the year. This document does not need to be signed. Once you have reached the \$9,500 it is suggested you create a new document.
- Any printing requirement that is estimated to be more than \$10,000 (taxes included) should be handled by Contracting, Forms and Materiel Management Unit.

The departmental delegation limit is \$10,000; all amounts over \$10,000 are to be awarded competitively and electronically per the departmental delegation matrix. *The departmental delegation framework does not provide authority to issue sole-source printing contracts over \$10,000.* In this situation, the appropriate contracting guidance to regional management would be for the regions to first determine regional printing requirements and then have PWGSC award a competitive contract to handle their requirements for the upcoming year, rather than creating numerous contracts just below the value of the departmental authority.

In another example, the departmental Guide on Contracting (which was issued in December 2007 and updated in June 2008) indicates in sections 2.3.5 and 4.1 that with the January 2007 restrictions from the Deputy Minister memorandum, the ‘PS-3’ contracting form must be used for service contracts under \$10,000. The Form PS-3 includes an area for the vendor to sign. For procurement of goods under \$5,000, the PO Form for Goods Under \$5,000 can be used, which does not include an area for the vendor to sign.

Contract Type	Departmental Form	Vendor Signature
Services under \$10K	PS-3	To be Included
Goods under \$5K	PO form for Goods Under \$5,000	Not included

Some regional contracting advisors we interviewed told us that it is permissible to use the PO Form for Goods for *goods* when they are procuring *services* under \$5,000. Of the 47 randomly selected service procurement files that did not relate to standing offers, we found that 21 (45%)

used the PO Form for Goods, while the remainder used the PS-3 form. The departmental Guide on Contracting does not state that staff must not use the PO Form for Goods to procure services. Nor could we find any other formal direction or guideline indicating that the use of the PO Form for Goods is allowed for procurement of services. It is our view that the use of the PO Form for Goods to procure services, with no place to capture the vendor signature, is an unacceptable practice, which should be specifically prohibited in the Guide on Contracting.

Except for this practice, however, we found from our review of the guide's contents that it has dedicated significant attention to providing information on unacceptable contracting practices. For example, it contains seven subsections under the heading "Unacceptable Contracting Practices", which include verbal agreements, after-the-fact/retroactive contracting, and contract splitting. Although very lengthy, the Guide on Contracting needs to provide more information and guidelines on how to conduct appropriate contracting practices that comply with applicable government legislation, policies, and regulations. For example, the guide does not provide enough information on how to procure services for key regional expenses such as printing and court reporting. Under section 6, Contracting Phase, there are two subsections entitled "Litigation Costs Related Services" and "Printing and publishing". Litigation costs related services include printing, court reporting services, and process servers (Sheriff/Bailiff). As stated in the guide, "Litigation costs related services, which are part of the procurement process, must comply with applicable government procurement rules and regulations. The Contracting and Materiel Management Operations Section is currently working in conjunction with various sectors within DOJ in order to put in place various acquisition vehicles that would facilitate DOJ's compliance to various rules and regulations applicable to government procurement." This is the extent of the guide's treatment of this issue.

Outline Agreement

A further example where more information with regard to regional contracting is required relates to the use of an outline agreement for contracting involving multiple responsibility centres, funds, or client projects.

Contracting personnel we interviewed in all three regions believe that a single contract cannot be created in IFMS to deal with situations where multiple responsibility centres, funds, and projects would incur costs from a single vendor. In their view, this is because the exact amount to be incurred by each responsibility centre or project cannot be foreseen at the time the contract begins.

As a result, we found that regions use the following two workaround solutions:

- 1) issue payments without a contract reference code and do not enter the corresponding contract in IFMS when the contract exists (i.e. for printing services in the BCRO and QRO);

OR

- 2) enter after-the-fact contracts when the regions know the breakdown of costs associated with the various responsibility centres and projects (i.e. for printing services in the PRO).

In an email of January 2006, the IFMS Help Centre directed contracting personnel to create a contract (Purchase Order) in IFMS at the time an invoice is received, as a means of dealing with this type of contracting situation.

Personnel from the Systems Section in the CFO Branch at headquarters indicated that the IFMS solution for this situation (which is used in the BCRO and QRO) is to use an Outline Agreement. An Outline Agreement treats the contract as a form of Standing Offer or Supply Arrangement, where various responsibility centres or projects can draw down the value of the contract using call-ups against the Outline Agreement.

The audit team observed that neither the IFMS Training Manual nor the departmental Guide on Contracting cross-references standing offers or supply arrangements to outline agreements (SAP terminology) or provides any information on how to handle the procurement situations referred to above.

It is the audit team's opinion that the departmental Guide on Contracting and IFMS Training Guide need to address unacceptable contracting practices and include more information on appropriate contracting and procurement practices.

Recommendation and Management Response

6. It is recommended that the Director General, Administration Directorate, in conjunction with the Chief Financial Officer, ensure that the Department of Justice Guide on Contracting and IFMS Training Guide are revised to address the issues noted above. (Medium risk)

Agreed. The Guide on Contracting will be updated to address the discrepancies noted.
Target date: January 2012.

The IFMS Training Guide was updated in August 2010 to include 'helpful hints' on printing contracts. Further changes to the Training Guide, including any that may arise from the revisions to the Guide on Contacting, will be done by the Financial Systems Team, CFO Branch, upon notification of the revisions from the Administration Directorate. The changes to the IFMS Training Guide will be made by March 2012.

2.5 Regional Contracts Review Committees

Regional Contracts Review Committees have not been appropriately exercising their stewardship responsibilities.

As noted earlier, in a memorandum dated January 24, 2007, the Deputy Minister gave authority to award service contracts between \$10,000 and \$25,000 to regional contracts review committees (RCRCs). In interviews RCRC members indicated that they rely on a Regional Contracting Advisor to inform them of the proposed contract files that require RCRC review, and that regional contracting personnel are responsible for ensuring that appropriate documentation is provided to the RCRC.

The audit team selected a total of six contracts from all three regions (each valued between \$10,000 and \$25,000) as part of a random file examination. In the sample we found that documentation on the contract files was incomplete, with documentation generally being limited to the Contract Initiation Document and the Statement of Work. As the contracts in the sample were for amounts within the RCRCs' approval authority, the RCRCs should have reviewed all six contracts. We found that documentation for five out of the six contracts selected showed limited RCRC involvement:

- Two of the five contracts concerned court reporting services that were coded as procured through 'competitive contracts'. The contract initiation documents erroneously recorded that the contracts were competitive, as the initial intention was to contract with multiple vendors. The files included no information indicating the extent to which other vendors were considered, nor did the files include the rationale for including or excluding this information.
- In all five files, the RCRCs' Records of Decision indicated no more than the decision to approve a contract and the names of the members who participated in the contract approval.

The file for one competitive contract (worth \$21,200) that we examined as part of the random sample showed no evidence of RCRC or CMMD involvement. The file did not include adequate documentation relating to unsuccessful bids, nor did it include a detailed evaluation of the bids received prior to the awarding of the contract.

RCRC members interviewed stated that they consider their role to be a ‘challenge function’, that is, to ensure that more than one option has been considered in creating a contract. They do not consider it their responsibility to ensure that all applicable contracting policies and procedures have been respected. RCRC members in all regions indicated that their primary focus is on expert witness contracts as opposed to service contracts. Members acknowledged that they are aware that the regions lack appropriate contracting mechanisms for key legal service commodities.

It is the audit team’s opinion that in order for the RCRCs to be effective, they must review and challenge all contracting activity that falls within their approval authority in accordance with applicable contracting policies and procedures. Furthermore, the RCRC members must be knowledgeable of contracting policies and procedures, particularly the distinctions between sole-source and competitive contracting, as well as the documentation and information required to support both types of contracts.

Recommendation and Management Response

7. It is recommended that the Director General, Administration Directorate, in conjunction with the regional directors general, ensure that the Regional Contracts Review Committees have clear terms of reference governing the exercise of their stewardship responsibilities with respect to contracting. (Medium risk)

Agreed. The Director General, Administration Directorate will standardize roles and responsibilities for all Regional Contracts Review Committees and revise their terms of reference to strengthen oversight. Target Date November 2011.

As the authority for all Internal Services in the Region, the regional directors general (RDGs) play a key role and are in fact accountable for the management and service provision of contracting in a region. As such, RDGs are key partners with the Director General, Administration Directorate, in ensuring that contracting practices and supporting financial activities are carried out in compliance with government and departmental policies and procedures.

As a longer-term measure to strengthen accountability, the Director General, Administration Directorate, in conjunction with the CFO, will review the delegation of contracting authority within the Department to rationalize where it is required, and establish a process to delegate contracting authority to areas that require it. Changes to delegation of contracting authorities will be sought as required. Target Date December 2012.

2.6 Reporting and Quality of Information for Management Decision Making

Contracting information in IFMS is not complete, accurate, or timely.

Information systems used by the Department for contracting should provide complete, accurate, timely, and relevant information to support management decision making.

All departments and agencies awarding contracts are required to submit an annual report to the Treasury Board Secretariat on contracting activities. Accordingly, the Department collects statistics on each procurement type from contract coding information extracted from IFMS.

Through an examination of contract files and an analysis of contracting data we found significant coding discrepancies:

- Of the 663 printing contracts awarded across the Department from April 1, 2007 through March 31, 2009, 656 (98.9%) were incorrectly recorded as service contracts (rather than contracts for goods) as indicated by *Government Contracts Regulations*, *TB Contracting Policy*, and the departmental Guide on Contracting.
- Significant payments for printing activity in the BCRO and in the QRO are not linked to contracts when, in fact, these contracts exist.
- From the file review of 17 randomly selected contract files coded as ‘competitive’ (i.e. not call-ups), 15 (88.2%) should have been coded as ‘non-competitive’.

As noted earlier in the report, significant amounts of payments without reference to a contract have occurred for which contracts were in place. Furthermore, the audit identified that two multi-year, multi-million dollar contracts for printing in the BCRO (one from 2004 and another from 2009) were not recorded in IFMS and the payments did not reference these contracts.

In addition, 30 of the 47 randomly selected contracts (i.e. not call-ups) were contract documents that were generated ‘after the fact’ and not signed by the vendor, indicating that purchase orders were created in IFMS solely for the purpose of being able to pay the invoices. With regard to

several of these cases, which were for printing, the purchase orders were created at the time of payment and the payments were made several months after some of the print jobs had been completed.

The audit team found that contracting information in IFMS is not complete, accurate, or timely. As a result, it cannot be fully relied upon to meet management needs for decision making on contracting activity in the Department. In our opinion, CMMD needs to undertake regular reviews of contracting information in IFMS to ensure that it is complete, accurate, and timely.

Recommendations and Management Responses

8. It is recommended that the Director General, Administration Directorate, ensure that contracting information in IFMS is regularly reviewed for data integrity (complete, accurate, and timely). (Medium risk)

Agreed. The Director General, Administration Directorate, will review contracting data in IFMS as part of the Compliance and Monitoring Program. Target Date February 2012. Upon identification of requirements, it may be necessary to modify existing IFMS reports to enable the timely validation process in a sustainable manner (depending on funding).

The Administration Directorate will prepare a training module for data integrity. Completed.

9. It is recommended that the Director General, Administration Directorate, in conjunction with the Chief Financial Officer, ensure that procedures, validation and edit rules are in place to manage contracting data. (Medium risk)

Agreed. The Director General, Administration Directorate, will provide contracting procedures and coding requirements training to personnel who use their contracting authority. Phase I of the training - Completed June 2011. Target date for phase 2 of training - December 2011. The Compliance and Monitoring Program will monitor contract data on a quarterly or more frequent basis. Target Date February 2012.

Any other changes and enhancements to IFMS will be determined during the 2012-13 timeframe that the CFO Branch, has set to respond to the "Procure 2 Pay" re-engineering project requirements, subject to approval of the project as a priority within the investment planning exercise. Target Date March 2013.

3. OBSERVATIONS – MANAGEMENT OF CONTRACTS AND COMPLIANCE WITH POLICIES

Two fundamental principles govern contracting in the federal government: open competition and ‘value for money’. Contracting rules and regulations are, therefore, designed to support a cost-effective and transparent procurement process.

As part of the audit, we examined contract files to determine the extent to which departmental contracting practices in the three regions under review complied with *Government Contracts Regulations*, TB policies, and PWGSC and Department of Justice policies and rules. We also examined the extent to which contracts were appropriately managed, from the selection of suppliers to the monitoring of activity.

To conduct our examination, we chose a random statistical sample of contracts from the 660 service contracts that were (1) over \$2,000, (2) not awarded by PWGSC, and (3) not expert witness or Crown counsel contracts. We selected a sample of 65 service contracts from the period April 1, 2007 to March 31, 2009 for the three regions. The sample was weighted according to both the amount of contracting activity initiated in each region and contracting method (competitive and non-competitive). One contract from the random sample was found to have been awarded and completely processed by CMMD at headquarters and was therefore excluded from the sample. As a result, we examined 64 randomly selected files.

To assess whether the Department is procuring services in compliance with policies and is managing contracts appropriately, the audit criteria were grouped into categories that reflected the contracting process, namely, requirements definition, procurement strategies, solicitation activities, contract award process, contract payment, and evaluation of contract performance. A discussion of specific findings and recommendations related to these categories follows this introduction.

Overall we observed a lack of compliance with selected requirements for service contracts in these regions.

We conclude with 95 percent confidence that service contracts we reviewed in the amount of \$2,000 or more in the three regions audited were not compliant with the above-noted categories 19 times out of 20 (+ or – 5.6%).

3.1 Requirements Definition

Work requirements were not consistently defined and documented in contracts prior to the start of the contracting process.

Contract work descriptions or specifications should be defined in terms of clear outputs, performance requirements, cost estimates for the required work, and the appropriate level of approval obtained before bids are solicited and contracts awarded. Appropriate approval is required through expenditure initiation authorizations under FAA Section 32.

Contracts are expected to be initiated when a Project Authority completes and submits a Contract Initiation Document or similar request to Regional Contracting. The purpose of the requisition form is to detail the work to be performed. In 48 of the 64 contract files reviewed (75%), we found no Contract Initiation Document on the file or any similar request to regional contracting outlining the work required prior to the work commencing. In reviewing contracts that were not call-ups against standing offers (47 out of the sample of 64 contracts), we identified that in 33 of the 47 files (70%) a Statement of Work was not provided to the vendor prior to work being completed.

As an example of the importance of defining and approving requirements at the appropriate time, in one contract file in the sample, the vendor provided a price list to CMMD prior to the work commencing. The region stated that it was unable to provide a contract with the corresponding Statement of Work and Terms and Conditions to the vendor, because CMMD at headquarters had not released the contract in a timely manner. Work began as scheduled without the contract being released. As a result of the delay, the vendor invoiced the Department at current rates that were higher than the rates in their price list, since the contract had not been finalized.

While expenditure initiation authorizations under FAA Section 32 were completed in 61 of the 64 files (95%) in the sample, in 24 files (37.5%) this authorization was provided *after* the work commenced.

It is the audit team's opinion that work requirements have not always been defined appropriately prior to contracting processes being initiated.

Recommendation and Management Response

10. It is recommended that the Director General, Administration Directorate, introduce measures that will ensure that work requirements are defined and documented prior to the start of the contracting process. (Medium risk)

Agreed. The Director General, Administration Directorate, will develop policy instruments outlining how to adequately define and document work requirements. In addition, training will be provided in this area and communiqués will be issued. This element will also be incorporated into the Compliance and Monitoring Program, in that a sampling of contract files will validate the definition of work requirements. Target Date February 2012.

3.2 Procurement

3.2.1 Procurement Strategies

Significant portions of regional contracting activity involve after-the-fact contracting, contract splitting, and sole-source contracting.

The regions need to promote and apply appropriate contracting strategies that are consistent with departmental policies and procedures, including contract justifications consistent with *Government Contracts Regulations*. Variance from departmental requirements for contracting should either be identified and corrected or monitored and reported.

After-the-Fact Contracting

We found no formal procurement mechanisms for significant portions of the contracting process. Some regions considered the commitment of funds ahead of time as sufficient to pay invoices from vendors. Other regions created contracts in IFMS in order to be able to pay vendors *after* invoices were received. In 39 of the 64 files (61%) reviewed, work was invoiced *before* the contract was awarded or entered into IFMS.

From a comparison of dates and other descriptive data in IFMS for the total 660 service contracts over \$2,000 that were awarded by the three regions between April 1, 2007 and March 31, 2009, we found that 195 (29.5%) of these contracts were created in IFMS more than 14 days after projects started or after the projects ended.

Contract Splitting

TB *Contracting Policy* mandates that contracts must not be split in order to circumvent dollar limit thresholds imposed under contract approval authorities.

The audit team suspected that 28 of the 64 service contracts in our sample may have involved contract splitting. As a result, we reviewed 81 additional service contract files that we suspected of being split from the original 28 files in the sample. We found that:

- of the 28 files suspected of contract splitting, 25 (i.e. 25 of the 64 contracts or 39%) demonstrated evidence of contract-splitting. (We found contracts from the same sector with the same vendor where the requirements bore the same or similar resemblance to other contracts.);
- of the 81 additional contract files examined, 72 showed evidence of contract splitting.

Of the total 660 contracts over \$2,000 that were awarded by the three regions during fiscal years 2007-08 and 2008-09, 97 (14.7%) showed evidence of contract splitting. Of these 97 contracts (25 from the random sample and 72 from the additional sample), the audit team found evidence of contract splitting in:

- 46 purchase orders awarded in the BCRO related to accommodation services (i.e. warehousing, repairs and maintenance of furnishings, and local moving services); (Interviews indicated that these were after-the-fact contracts related to a project directed by headquarters and PWGSC and that the region received invoices for payment without a contract. Regional Corporate Services personnel indicated that these invoices ought to have been sent to headquarters to determine the proper approach for dealing with these vendors.)
- 18 printing purchase orders awarded in the PRO in Edmonton.

The situation in the PRO is of particular concern as the purchase orders for printing did not relate to an actual contract. The departmental delegation limit for awarding printing contracts without competition is \$10,000. In one case, it was observed that several purchase orders were created for a single invoice over \$10,000, in order to remain under this contract limit.

Use of Sole-Source Contracts

TB *Contracting Policy* requires contracts to be awarded on a competitive basis (unless TB exceptions can be demonstrated to apply). The Policy also requires the contracting authority, when awarding a sole-source contract, to record the decision together with the justification for the decision.

From our sample of 64 randomly selected files, 47 contract files were not call-ups against a Standing Offer. In only two of these 47 files (4%) was work awarded through a competitive process. Of the remaining 45 sole-source contracts, we found:

- Nine related to printing (eight from the PRO (Edmonton) and one from the QRO). None of these contracts had sole-source justifications on file.
- Nine related to accommodations in the BCRO. None of these contracts had sole-source justifications on file. (As above, interviews indicated that these were after-the-fact contracts related to a project directed by headquarters and PWGSC and that the region received invoices for payment without a contract. Regional Corporate Services personnel indicated that these invoices ought to have been sent to headquarters to determine the proper approach for dealing with these vendors.)
- Eleven related to court reporters and transcripts. Of these, six contracts did not have sole-source justifications on file. (There are a limited number of these vendors in each region. While the regions often don't choose the specific vendor to provide services for a specific case, they can predict the minimum amount of business they would require from these vendors based on previous years' activity.)
- Eight related to training, of which four (from the QRO and PRO) did not have sole-source justifications on file.
- Eight related to a variety of different commodities.

It is the audit team's opinion that appropriate procurement strategies have not always been selected.

Recommendation and Management Response

11. It is recommended that the Director General, Administration Directorate, introduce measures to enforce compliance with the issues noted above. (High risk)

Agreed. The Director General, Administration Directorate, will create policy instruments, develop a Compliance and Monitoring Program, and provide training to address compliance issues. The Policy framework for the Compliance and Monitoring Program will contain express provisions on reporting of non-compliance and to enforce compliance with contracting rules on Contract Splitting, Sole Source Contracts and After-the-Fact Contracts . The Compliance and Monitoring Program will consist of an initial review before the contract is awarded for contracts over a predetermined value or for sensitive files, in addition to a post-contract award compliance review based on a target percentage of contracts within predetermined value ranges – for example, up to five

percent of contracts valued between \$1,000 and \$10,000 will be subject to annual review. There will be ad hoc targeted reviews based on commodities as determined by the Director of Contracting and Materiel Management. Target Date February 2012.

Contracting compliance will be added to the performance agreements of all Direct Reports. Completed.

Multi-year procurement vehicles will be developed to meet recurring requirements such as printing, court reporting, transcription and process servers. Target Date February 2012.

3.3 Solicitation Activities

Contracting files in the three regions audited lacked documented support that solicitation activities and decisions had been conducted in a transparent manner.

Solicitation activities⁷ should provide equal opportunity for all contractors to access government business and should be conducted in a transparent and rigorous manner.⁸

TB *Contracting Policy* states that “Government contracting shall be conducted in a manner that will stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds.” Complete documentation provides management with a record that contract rules and regulations were followed and ensures that departmental contracting activities are conducted in a transparent, fair, and rigorous manner.

Our examination of contracts awarded as non-competitive included an assessment of completeness and clarity as to why the winning vendor was qualified while other potential vendors were not. The file examination also sought to determine the extent to which the rationale for not having pursued a competitive process was documented.

From our sample of 64 service contracts, we reviewed 30 contract files that were coded as non-competitive contracts. The remaining number of contracts were call-ups against standing offers (17 files) and competitively coded contracts (17 files). In 24 of the 30 contract files (80%), we found no information recorded on how the Department found the vendor (e.g. from previous use,

⁷ Section 7 of the *Government Contracts Regulations* allows the contracting authority to determine the appropriate solicitation method. This may include electronic tendering, traditional limited tendering, Standing Offer and Supply Arrangement, or advanced contracts award notice (ACAN) (in specific cases only).

⁸ From the Department of Justice Canada Guide on Contracting, page 48.

the Yellow Pages, Google search). In 25 of the 30 files (83%) we found no vendor information, such as a company profile or curriculum vitae of the person performing the work. In addition, there was no information indicating how the vendor was qualified to perform the services required.

As noted earlier, the *TB Contracting Policy* requires the contracting authority, when awarding a sole-source contract, to record the decision together with the justification for the decision. Sole-source justifications, however, were not found in 20 of the 30 files (66%).

Many of the service contract files examined were simply purchase orders that were created after the work was completed for the purposes of being able to process the corresponding invoice in IFMS. For sole-source contracts, documentation on file is required to demonstrate how the Department found the vendor, why the vendor was qualified to provide the service, and why the Department has decided not to pursue a competitive process for the service requirement.

It is the audit team's opinion that solicitation activities in the three regions under review have not been appropriately recorded and do not demonstrate transparency.

Recommendation and Management Response

12. It is recommended that the Director General, Administration Directorate, establish measures to enforce that contracting files demonstrate that solicitation activities and decisions have been conducted in a transparent manner. (Medium risk)

Agreed. The Director General, Administration Directorate, will create policy instruments, develop a Compliance and Monitoring Program, and provide training to ensure that contracting files demonstrate that solicitation activities and decisions have been conducted in a transparent manner. The Compliance and Monitoring Program Framework will contain express provisions on enforcement consequences. Target Date February 2012.

3.4 Contract Award Process

The regions audited are not capturing and retaining key Standing Offer documentation for service contracts.

Standing offers include rules for their application, as well as maximum limitations, terms, and conditions. Specific sections of Standing Offer documentation need to be retained with the

contract file in order to validate whether call-up rules have been properly applied and services acquired fall within the scope of the Standing Offer.

From our sample of 64 files (which included 17 call-ups), we found that key Standing Offer information, upon which the call-ups were based, was not retained. Of the 17 files sampled, none of the files contained Standing Offer information or documentation. As a result, the audit team was unable to assess the extent to which the Department had properly awarded the call-ups. While audit interviewees indicated that some standing offers were in excess of 100 pages in length and could not be placed in the files, electronic retention of the pertinent sections would have provided sufficient documentation to determine compliance. We noted that CMMD's proactive disclosure monitoring process had challenged one of the 17 sampled files. CMMD had concluded that the call-up did not fall within the scope of the Standing Offer and that an ineligible vendor was used.

It is the audit team's opinion that retention of key Standing Offer information is essential to support and validate appropriate and timely application of contracting terms and conditions.

Recommendation and Management Response

13. It is recommended that the Director General, Administration Directorate, ensure that procedures are developed for capturing and retaining key Standing Offer documentation. (Medium risk)

Agreed. All documentation leading up to a contracting decision, including the use of a particular Standing Offer and a copy of the Standing Offer call-up will be retained on the contracting file. Procedures and supporting training will support these requirements. All information about Standing Offers initiated by the Department will be available in the CCMD. However, as PWGSC Standing Offer information is available electronically on the PWGSC Web site, a copy is not required on the procurement file. CMMD has confirmed with PWGSC that archived standing offers will be available upon request to Client departments. The standing offers can be large documents, up to 300 pages, and it is not in accordance with Justice sustainable development practices to print and store large Standing Offer documents on every file. Target Date February 2012.

Improvements are required in documenting and recording contract award activities and decisions in IFMS and regional contracting files.

From our sample of 64 randomly selected contract files, the audit team examined the 17 files that were coded in IFMS and regional files as competitive contracts. We found that 15 of these contracts were actually awarded on a sole-source basis. Only two of the 17 files showed evidence of a competitive process.

In one of these two files, significant information about the solicitation and awarding of the contract was absent from the file. No information was maintained in the file about the unsuccessful bidders, including the unsuccessful bids themselves; the unsuccessful bidders' information, including contact information and recommended bidders list; the detailed evaluation of the unsuccessful bids; or an indication as to when the bids were received.

The second of the two files contained more complete documentation. There was an email in the file indicating that the higher-priced bid from this file was selected because the bidder had more expertise. However, there was no documentation (e.g. contract proposal, team members' curriculum vitae) on file to support this assertion.

In our view, the Department is at risk of contracts appearing to have been improperly awarded where:

- contracts awarded on a sole-source basis are inaccurately recorded as being competitively awarded in IFMS and regional contracting files;
- contract files lack evidence that all bids received are evaluated;
- the rationale for selecting the successful bid does not respect the evaluation criteria.

Furthermore, before contracts are awarded, all persons who may require access to departmental facilities must have a security clearance, and this must be documented in the contract file. We examined our statistical sample of service contract files to verify whether file documentation supported the need for vendor access to departmental facilities and whether contractors had the corresponding security clearance. Of the 64 files in the sample, 23 had a possibility of the vendor requiring access to the Department's facilities to undertake or complete work. In nine of the 23 files (39%), the contract files did not demonstrate whether the vendor required on-site access. More importantly, 13 files of the 64 indicated that it was likely that the vendor's personnel would require access to departmental facilities or classified information. Yet, in 10 of 13 files (77%), there was no security clearance or similar information recorded on the file. Security requirements for each contract need to be documented and properly addressed to ensure that appropriate vendors are selected and the security interests of the Department protected.

It is the audit team's opinion that improvements are required to regional contract award documentation.

Recommendation and Management Response

14. It is recommended that the Director General, Administration Directorate, enforce that contract award activities, decisions, and security clearances are appropriately documented and that contract award activities, including selection process, process type, and contract type, are recorded appropriately in IFMS. (Medium risk)

Agreed. The Director General, Administration Directorate, will create policy instruments, develop a Compliance and Monitoring Program, and provide training to address these issues. A file documentation check list will be created to ensure that contract award activities, decisions and security clearances are appropriately documented and that contract award activities, including selection process, process type, and contract type are recorded appropriately in IFMS. Target Date February 2012.

3.5 Contract Payment

Service contract payments are generally made in compliance with contract requirements.

Service contracts need to be administered in accordance with delegated contracting and financial authorities, and agreed in terms of time, cost, and performance. The audit team found proper FAA Section 34 approval in 58 of 62 files (93%) where work was invoiced against the contract during the audit period. In the remaining files (7%) we found that some were missing invoices and some were missing proper FAA Section 34 approval. In some cases where the Section 34 approval was in place, improper rates had been charged for the contracted service and the approval should not have been granted. The audit team noted that in only one of the audited files identified with an improper Section 34 approval was there evidence that Regional Corporate Services had detected the error when undertaking account verification. In our judgment, these types of errors can be overcome through increased diligence. This matter has been reviewed with management of the three regions visited.

3.6 Evaluation of Contract Performance

Contractor performance is not being formally evaluated.

The TB *Contracting Policy*, section 12.3.1 states that “Procurement files shall be established and structured to facilitate management oversight with a complete audit trail that contains

contracting details related to relevant communications and decisions including the identification of involved officials and contracting approval authorities.”

Contractor (or vendor) performance should be evaluated at the completion of each contract. For consulting and professional service contracts, Section 16.11.8 of the *Contracting Policy* states that “On completion of the contract, the contracting authority should evaluate the work performed by the consultant or professional.”

Section 8.1 of the departmental Guide on Contracting states that “Managers should document contractor assessment results in the contract file.”

As a result of our file examination, the audit team found that none of the contracted vendors was formally evaluated. It is our opinion that the departmental procurement practices should include documenting the evaluation of vendor performance.

Recommendation and Management Response

15. It is recommended that the Director General, Administration Directorate, inform departmental personnel of the need to evaluate contractor performance. (Low risk)

Agreed. A process for the evaluation of contractor performance will be developed and a post contract summary will be required for service contracts. The Department will develop a process to assess contractor performance and report poor vendor performance to PWGSC. Target Date March 2012.

4. RECOMMENDATIONS AND MANAGEMENT RESPONSES

- 1. It is recommended that the Director General, Administration Directorate, in conjunction with the regional directors of Corporate Services, ensure that adequate planning in relation to contracting activities is undertaken at the regional level. (Medium risk).....6**

Agreed. The Director General, Administration Directorate will align procurement planning to business and investment planning in the Regions and at Headquarters. Target date September 2012.

Given the varied nature of the legal services provided by the Department and its lack of control over schedules to meet court-imposed directions and deadlines, many requirements, such as the litigation services mentioned in the audit, are time-sensitive. The Administration Directorate will award a number of multi-year procurement vehicles to meet recurring requirements such as printing, court reporting, transcription, and process servers. Use of these procurement vehicles will be mandatory for all clients. Target Date February 2012.

- 2. It is recommended that the Director General, Administration Directorate, discuss with the Chief Financial Officer the need to assign appropriate capability in IFMS to release contracts that fall within the authority of the Regional Contracts Review Committees. (Medium risk)7**

Agreed. The Administration Directorate and the Chief Financial Officer (CFO) Branch discussed the issue, and adjusted release mechanisms in IFMS in August 2010 to allow individuals to exercise appropriate release strategy according to their contracting delegation. As well, a revised Delegated Financial Signing Authorities Chart was approved in January 2010. This new chart and its supporting notes detail contracting authorities in a clear, concise manner. Completed.

3. It is recommended that the Chief Financial Officer, in conjunction with the Director General, Administration Directorate and regional directors general, strengthen the accountability framework to address risks identified in relation to IFMS roles (Medium risk).....10

Agreed. Business processes at both Headquarters and regional levels are being re-examined, with a view to enhancing the accountability framework and strengthening compensating controls. More specifically:

- At the regional level, the CFO, in conjunction with the Director General, Administration Directorate, and the regional directors general, is addressing the need to ensure compliance with contracting and financial policies and practices. This includes reviewing Regional Corporate Services’ understanding and application of its roles and responsibilities, and assessing existing mitigation strategies and whether others need to be put in place due to conflicting roles in either the business process or the IFMS environment. Various approaches will be used, including discussions with regional finance directors, teleconferences, national meetings, on-site visits by Headquarters, and training. A collaborative action plan and reporting governance will be developed and implemented by the CFO, the Director General, Administration Directorate and the regional directors general by October 31, 2011.
- At headquarters, the CFO will introduce and expand monitoring activities as compensating controls in order to mitigate exposure to risks such as those identified with respect to segregation of duties in IFMS. These monitoring activities will be defined and in place by November 30, 2011. Findings will be communicated to the appropriate levels of management, and any remedial actions determined in consultation with the regional directors general (RDG).

These activities are being performed with the tools and resources currently available. The “Procure 2 Pay” re-engineering project will provide additional opportunities from which to strengthen internal controls, subject to approval of the project as a priority within the investment planning exercise.

4. It is recommended that the Director General, Administration Directorate, monitor contracting activity under \$10,000, including the sampling of contract files, to determine the extent of compliance with policies and procedures. (Medium risk) ...13

Agreed. The Director General, Administration Directorate, will implement a Compliance and Monitoring Program. The Program will consist of a pre-award review for contracts

over a predetermined value or for sensitive files. There will also be a post-contract award compliance review based on a target percentage of contracts within predetermined value ranges – for example, up to five percent of contracts valued between \$1,000 and \$10,000 will be subject to annual review. There will be ad hoc targeted reviews based on commodities as determined by the Director of Contracting and Materiel Management. These activities will support recommendations 4, 5, 6, 8, 10, 11, 12, 13 and 14. The Assistant Deputy Minister of the Management Sector has provided resources to support this activity. Target Date February 2012.

The Department will develop training to address the processes, procedures and coding requirements for contracting, which will support recommendations 4, 6, 7, 10, 11, 12, 13, 14 and 15. The Assistant Deputy Minister of the Management Sector has provided resources to support this activity. Target Date December 2012.

The Department will also create a series of policy instruments to improve procurement planning and compliance, which will support recommendations 4, 10, 11, 12, 14 and 15. The Assistant Deputy Minister of the Management Sector has provided resources to support this activity. Target Date February 2012.

5. It is recommended that the Director General, Administration Directorate, in conjunction with the Chief Financial Officer, ensure that payments without reference are reviewed to detect payments to vendors without contracts. (Medium risk).....14

Agreed. The Compliance and Monitoring Program will include reviews of payment without reference. Target Date February 2012.

A directive on payment without reference and related bulletins will clarify when such payments are acceptable. Completed.

In support of responsibilities under Section 33 of the FAA, Accounting Operations, CFO Branch, issued a bulletin providing regional accounting units with further guidance on the verification and review of payments without reference. Completed.

The Administration Directorate and the CFO Branch have also discussed how best to exchange information on the results of their reviews of payments without reference, as well as any findings of non-compliance, and have implemented a protocol. Completed.

- 6. It is recommended that the Director General, Administration Directorate, in conjunction with the Chief Financial Officer, ensure that the Department of Justice Guide on Contracting and IFMS Training Guide are revised to address the issues noted above. (Medium risk)17**

Agreed. The Guide on Contracting will be updated to address the discrepancies noted. Target Date January 2012.

The IFMS Training Guide was updated in August 2010 to include 'helpful hints' on printing contracts. Further changes to the Training Guide, including any that may arise from the revisions to the Guide on Contracting, will be done by the Financial Systems Team, CFO Branch, upon notification of the revisions from the Administration Directorate. The changes to the IFMS Training Guide will be made by March 2012.

- 7. It is recommended that the Director General, Administration Directorate, in conjunction with the regional directors general, ensure that the Regional Contracts Review Committees have clear terms of reference governing the exercise of their stewardship responsibilities with respect to contracting. (Medium risk)19**

Agreed. The Director General, Administration Directorate will standardize roles and responsibilities for all Regional Contracts Review Committees and revise their terms of reference to strengthen oversight. Target Date November 2011.

As the authority for all Internal Services in the Region, the regional directors general (RDGs) play a key role and are in fact accountable for the management and service provision of contracting in a region. As such, RDGs are key partners with the Director General, Administration Directorate, in ensuring that contracting practices and supporting financial activities are carried out in compliance with government and departmental policies and procedures.

As a longer-term measure to strengthen accountability, the Director General, Administration Directorate, in conjunction with the CFO, will review the delegation of contracting authority within the Department to rationalize where it is required, and establish a process to delegate contracting authority to areas that require it. Changes to delegation of contracting authorities will be sought as required. Target Date December 2012.

- 8. It is recommended that the Director General, Administration Directorate, ensure that contracting information in IFMS is regularly reviewed for data integrity (complete, accurate, and timely). (Medium risk)21**

Agreed. The Director General, Administration Directorate, will review contracting data in IFMS as part of the Compliance and Monitoring Program. Target Date February 2012. Upon identification of requirements, it may be necessary to modify existing IFMS reports to enable the timely validation process in a sustainable manner (depending on funding).

The Administration Directorate will prepare a training module for data integrity. Completed.

- 9. It is recommended that the Director General, Administration Directorate, in conjunction with the Chief Financial Officer, ensure that procedures, validation and edit rules are in place to manage contracting data. (Medium risk)21**

Agreed. The Director General, Administration Directorate, will provide contracting procedures and coding requirements training to personnel who use their contracting authority. Phase I of the training - Completed June 2011. Target date for phase 2 of training - December 2011. The Compliance and Monitoring Program will monitor contract data on a quarterly or more frequent basis. Target Date February 2012.

Any other changes and enhancements to IFMS will be determined during the 2012-13 timeframe that the CFO Branch, has set to respond to the "Procure 2 Pay" re-engineering project requirements, subject to approval of the project as a priority within the investment planning exercise. Target Date March 2013.

- 10. It is recommended that the Director General, Administration Directorate, introduce measures that will ensure that work requirements are defined and documented prior to the start of the contracting process. (Medium risk)25**

Agreed. The Director General, Administration Directorate, will develop policy instruments outlining how to adequately define and document work requirements. In addition, training will be provided in this area and communiqués will be issued. This element will also be incorporated into the Compliance and Monitoring Program, in that a sampling of contract files will validate the definition of work requirements. Target Date February 2012.

11. It is recommended that the Director General, Administration Directorate, introduce measures to enforce compliance with the issues noted above. (High risk)27

Agreed. The Director General, Administration Directorate, will create policy instruments, develop a Compliance and Monitoring Program, and provide training to address compliance issues. The Policy framework for the Compliance and Monitoring Program will contain express provisions on reporting of non-compliance and to enforce compliance with contracting rules on Contract Splitting, Sole Source Contracts and After-the-Fact Contracts . The Compliance and Monitoring Program will consist of an initial review before the contract is awarded for contracts over a predetermined value or for sensitive files, in addition to a post-contract award compliance review based on a target percentage of contracts within predetermined value ranges – for example, up to five percent of contracts valued between \$1,000 and \$10,000 will be subject to annual review. There will be ad hoc targeted reviews based on commodities as determined by the Director of Contracting and Materiel Management. Target Date February 2012.

Contracting compliance will be added to the performance agreements of all Direct Reports. Completed.

Multi-year procurement vehicles will be developed to meet recurring requirements such as printing, court reporting, transcription and process servers. Target Date February 2012.

12. It is recommended that the Director General, Administration Directorate, establish measures to enforce that contracting files demonstrate that solicitation activities and decisions have been conducted in a transparent manner. (Medium risk)29

Agreed. The Director General, Administration Directorate, will create policy instruments, develop a Compliance and Monitoring Program, and provide training to ensure that contracting files demonstrate that solicitation activities and decisions have been conducted in a transparent manner. The Compliance and Monitoring Program Framework will contain express provisions on enforcement consequences. Target Date February 2012.

- 13. It is recommended that the Director General, Administration Directorate, ensure that procedures are developed for capturing and retaining key Standing Offer documentation. (Medium risk)30**

Agreed. All documentation leading up to a contracting decision, including the use of a particular Standing Offer and a copy of the Standing Offer call-up will be retained on the contracting file. Procedures and supporting training will support these requirements. All information about Standing Offers initiated by the Department will be available in the CCMD. However, as PWGSC Standing Offer information is available electronically on the PWGSC Web site, a copy is not required on the procurement file. CMMD has confirmed with PWGSC that archived standing offers will be available upon request to Client departments. The standing offers can be large documents, up to 300 pages, and it is not in accordance with Justice sustainable development practices to print and store large Standing Offer documents on every file. Target Date February 2012.

- 14. It is recommended that the Director General, Administration Directorate, enforce that contract award activities, decisions and security clearances are appropriately documented and that contract award activities, including selection process, process type, and contract type are recorded appropriately in IFMS. (Medium risk).....32**

Agreed. The Director General, Administration Directorate, will create policy instruments, develop a Compliance and Monitoring Program, and provide training to address these issues. A file documentation check list will be created to ensure that contract award activities, decisions and security clearances are appropriately documented and that contract award activities, including selection process, process type, and contract type are recorded appropriately in IFMS. Target Date February 2012.

- 15. It is recommended that the Director General, Administration Directorate, inform departmental personnel of the need to evaluate contractor performance. (Low risk)33**

Agreed. A process for the evaluation of contractor performance will be developed and a post contract summary will be required for service contracts. The Department will develop a process to assess contractor performance and report poor vendor performance to PWGSC. Target Date March 2012.

APPENDIX A – CONTEXTUAL INFORMATION

Overview of Activity for Service Contracts in British Columbia, Prairie, and Quebec Regions.

All tables show values for service contracts, which do not include expert witnesses and Crown agents, as they have been excluded from the scope.

Table 1 shows the contracting selection method and type of contract used in the three regions, during fiscal years 2007-08 and 2008-09 and the number of contracts.

Table 2 illustrates the contracting activity in each region's major organizations by contract value and volume.

Table 3 shows the amount of contracting activity by dollar range.

Table 4 shows the amount of contracting activity by General Ledger account for service contracts over \$2,000.

Table 1
Service Contracts for British Columbia, Prairie, and Quebec Regions
Stratified by Tendering and Type of Contract
For Fiscal Years 2007-08 and 2008-09

Contracts coded as being competitively awarded	Amount Awarded						Number of Contracts
	BC	Prairie	Quebec	Total	2007-08	2008-09	
Call-up	\$632,190	\$854,137	\$506,432	\$1,992,759	\$1,092,977	\$899,782	233
ACAN		6,743		6,743	6,743		1
Printing	5,081	315,585		320,666	164,942	155,724	95
Purchase Order (Goods)	55	254,328	34,716	289,099	116,752	172,347	205
Service Contract	205,262	541,364	109,709	856,335	436,301	420,034	114
Supply Arrangement	592	7,875	83,538	92,004	5,817	86,187	5
Task Authorization	3,904	18,156		22,060	1,486	20,574	5
Total Competitive	\$847,083	\$1,998,188	\$734,395	\$3,579,666	\$1,825,018	\$1,754,648	658
Contracts coded as being non-competitively awarded	Amount Awarded						Number of Contracts
	BC	Prairie	Quebec	Total	2007-08	2008-09	
Call-up	\$137,599	\$6,803	\$22,670	\$167,072	\$11,516	\$155,556	25
Printing	22,287	30,315		52,602	50,092	2,510	17
Purchase Orders (Goods)	427,852	101,481	296,973	826,307	390,479	435,828	651
Service Contract	512,974	340,903	335,700	1,189,577	707,692	481,885	187
Supply Arrangement	13,023		88,557	101,580	33,825	67,755	7
Total Non-Competitive	\$1,113,735	\$479,503	\$743,900	\$2,337,138	\$1,193,604	\$1,143,534	887
Total Contracts	\$1,960,819	\$2,477,690	\$1,478,295	\$5,916,804	\$3,018,622	\$2,898,182	1,545

The British Columbia figures contain 87 British Columbia contracts worth \$328,827 that were not awarded or managed from the British Columbia Regional Office.

Table 2

British Columbia, Prairie, and Quebec Regions

Summary of Service Contracts by Organization April 1, 2007 to March 31, 2009

British Columbia Service Contracts		
British Columbia Regional Office Service Contracts		
Organization	Number of Contracts	Amount Awarded
CORPORATE SERVICES GROUP	125	\$521,180
CORPORATE SERVICES - OFFICE ACCOMODATIONS	105	\$425,619
ABORIGINAL	41	\$240,473
REGIONAL DIRECTOR GENERAL'S OFFICE	34	\$202,657
BUSINESS & REGULATORY	18	\$125,008
TAX	11	\$42,806
HUMAN RESOURCES	12	\$28,605
CITIZENSHIP & IMMIGRATION	6	\$16,954
	352	\$1,603,303
Other British Columbia Service Contracts		
INDIAN & NORTHERN AFFAIRS, LSU	64	\$211,153
BUSINESS CENTRE	17	\$116,504
OFFICE OF THE NORTHERN REGION	16	\$67,128
YUKON REGIONAL OFFICE	6	\$22,777
	103	\$417,562
TOTAL	455	\$2,020,865
Prairie Region Service Contracts		
Organization	Number of Contracts	Amount Awarded
TAX LITIGATION - EDMONTON	78	\$562,801
ABORIGINAL AFFAIRS - EDMONTON	83	\$350,400
WINNIPEG REGIONAL OFFICE	50	\$343,036
EDMONTON REGIONAL OFFICE	64	\$267,616
IMS PRAIRIE REGION	30	\$213,139
SASKATOON REGIONAL OFFICE	66	\$172,551
REGULATORY AND BUSINESS - EDMONTON	75	\$162,377
CALGARY OFFICE	38	\$77,280
CITIZENSHIP, IMMIGRATION & PUBLIC SAFETY	31	\$66,830
HUMAN RESOURCES POLICY & PLANNING	2	\$40,410
ABORIGINAL LITIGATION STRATEGY	10	\$34,806
HUMAN RESOURCES	11	\$33,915
INFORMATION TECHNOLOGY	5	\$24,450
PRAIRIE REGION - Other	10	\$22,723
COMMUNICATIONS - PRAIRIE REGION	10	\$14,067
FINANCE & ADMINISTRATION - PRAIRIE REGION	4	\$11,126
ABORIGINAL LAW SECTION - LITIGATION	2	\$10,970
NORTH WEST TERRITORY REGIONAL OFFICE	6	\$5,189
NUNAVUT REGIONAL OFFICE	2	\$3,076
INFORMAL CONFLICT MANAGEMENT SERVICE	1	\$882
TOTAL	578	\$2,417,644

Quebec Regional Office Service Contracts		
Organization	Number of Contracts	Amount Awarded
REGIONAL CORPORATE SERVICES DIRECTORATE	109	\$778,956
COMMERCIAL LAW & REGULATORY LAW PORTFOLIO	152	\$263,362
TAX LAW PORTFOLIO	120	\$199,178
REGIONAL DIRECTOR'S OFFICE	73	\$121,103
IMMIGRATION PORTFOLIO	37	\$63,086
ABORIGINAL LAW PORTFOLIO	12	\$34,277
TAX LAW SERVICES	1	\$6,339
EXTRADITION LAW GROUP	4	\$4,998
JUSTICE PORTFOLIO	3	\$4,555
TECHNOLOGY SERVICES DIVISION	1	\$2,441
TOTAL	512	\$1,478,295

British Columbia, Prairie, and Quebec Regions Awarded Service Contracts		
	Number of Contracts	Amount Awarded
TOTAL	1545	\$5,916,804

Notes:

1. Discrepancies exist between the regional totals in Table 1 and Table 2, as some contracting activity initiated in the British Columbia and Prairie regions was coded to organizations in the other region.
2. The Citizenship and Immigration Section in the BCRO was changed to the Public Safety, Defence and Immigration Section in 2009.

Table 3
British Columbia, Prairie, and Quebec Regions
Service Contracts Stratified by Dollar Value

Dollar Range	2007-08				2008-09			
	Number of Contracts	Contracts (%)	Final Contract Amounts (%)	Total Final Contract Amounts (\$)	Number of Contracts	Contracts (%)	Final Contract Amounts (%)	Total Final Contract Amounts (\$)
0 - 1,999	348	51.6	9.3	279,753	536	61.5	13.1	379,915
2,000 – 2,999	72	10.7	6.1	182,741	77	8.8	6.6	190,497
3,000 – 3,999	52	7.7	6.1	184,530	69	7.9	8.1	235,868
4,000 – 4,999	35	5.2	5.1	153,800	40	4.6	6.2	179,740
5,000 – 5,999	27	4.0	4.9	146,787	35	4.0	6.6	190,304
6,000 – 6,999	12	1.8	2.6	77,567	12	1.4	2.7	77,639
7,000 – 7,999	12	1.8	3.0	89,586	10	1.1	2.6	76,283
8,000 – 8,999	12	1.8	3.4	103,203	14	1.6	4.1	118,848
9,000 – 10,000	36	5.3	11.6	349,419	12	1.4	4.0	115,210
>10,000	68	10.1	48.1	1,451,261	66	7.6	46.0	1,333,853
Total	674	100	100	3,018,647	871	100	100	2,888,157
0.00 – 1,999	348	51.6	9.7	279,753	536	61.5	13.1	379,915
>2,000	326	48.4	90.3	2,738,894	335	38.5	86.9	2,518,242
Total	674	100	100	3,018,647	871	100	100	2,898,157

Contracts over \$2,000 were part of the population sampled. Of the 661 contracts over \$2,000, one was an ACAN, which was also excluded from the sample.

Table 4
British Columbia, Prairie, and Quebec Regions
Service Contracts over \$2,000 Stratified by General Ledger Account

GL Description	Amount Awarded			
	B-C	Prairie	Quebec	Total
Rental of Photocopiers	\$ 179,923	\$ 241,625	\$ 170,061	\$ 591,610
Temporary Office Assistance	164,701	260,647	122,903	548,252
Court Reporters	24,981	350,370	85,462	460,813
Printing	20,534	375,166	34,628	430,328
Other Prof. Services <\$100,000/YR	81,980	35,052	193,441	310,472
Local Moving Services	176,563	78,519	4,982	260,064
On-Line Enquiry		213,167		213,167
Training Second Language	41,584	7,434	162,660	211,678
Training Consultants	140,249	33,717		173,966
Warehousing Services	161,927			161,927
Transcripts	127,362	20,149		147,511
Commissionaires	48,690	2,926	62,420	114,036
Data Preparation	99,887	12,900		112,788
Other Health Services	16,450	52,670	43,300	112,420
Translation Services	14,638	28,470	60,557	103,666
Sheriff/Bailiff		100,848		100,848
Maintenance Bldg - General	22,925	67,663		90,588
Training & Development for Staff	34,802		55,383	90,185
Repairs & Maint. Furniture & Furnishing	85,932			85,932
Rental of Space	26,867	10,079	42,286	79,233
Image/Video Equipment >10K	31,155	32,029	10,515	73,698
Paper Recycling Service	48,811	13,500		62,310
Repairs & Maintenance Computer Equipment	33,375	21,200	7,228	61,804
Image/Video Equipment <10K	28,993	27,471		56,464
Non-Professional Services Contracts	18,494	19,998	8,505	46,997
Professional Opinions & Advice	41,539			41,539
Other Services Not Elsewhere Specified		36,826		36,826
Accounts With Less Than \$35K	140,787	173,945	156,540	471,272
Total	\$ 1,813,152	\$ 2,216,370	\$ 1,220,871	\$ 5,250,392

GL Description	Number of Contracts			
	BC	Prairie	Quebec	Total
Rental of Photocopiers	16	17	8	41
Temporary Office Assistance	21	28	9	58
Court Reporters	3	27	18	48
Printing	4	66	9	79
Other Prof. Services <\$100,000/YR	6	4	36	46
Local Moving Services	20	9	1	30
On-Line Enquiry		5		5
Training Second Language	7	1	12	20
Training Consultants	20	4		24
Warehousing Services	44			44
Transcripts	5	7		12
Commissionaires	5	1	1	7
Data Preparation	14	3		17
Other Health Services	3	4	2	9
Translation Services	1	3	1	5
Sheriff/Bailiff		6		6
Maintenance Bldg - General	5	11		16
Training & Development for Staff	5		14	19
Repairs & Maint. Furniture & Furnishing	20			20
Rental of Space	9	2	12	23
Image/Video Equipment >10K	2	2	1	5
Paper Recycling Service	5	5		10
Repairs & Maintenance Computer Equipment	3	1	2	6
Image/Video Equipment <10K	6	2		8
Non-Professional Services Contracts	6	2	1	9
Professional Opinions & Advice	4			4
Other Services Not Elsewhere Specified		7		7
Accounts With Less Than \$35K	24	33	25	82
Total	258	250	152	660

The British Columbia figures contain 87 British Columbia contracts worth \$328,827 that were not awarded or managed from the British Columbia Regional Office.

Table 5
Legal Services Expenditures for the British Columbia, Prairie, and
Quebec Regions
Lines of Coding and Amounts Spent

	All Three Regions			
	Lines	O & M (%)	Dollars	O & M (%)
O & M coding, excluding JVs and Travel	118,966		\$25,224,192	
Printing, referencing a PO Number	2,109	1.8	469,520	1.9
Printing, no PO Number reference	11,008	9.3	2,106,223	8.4
Sheriff/Bailiff, referencing a PO Number	120	0.1	13,104	0.1
Sheriff/Bailiff, no PO Number reference	7,263	6.1	470,266	1.9
Court Reporters, referencing a PO Number	708	0.6	355,865	1.4
Court Reporters, no PO Number reference	715	0.6	331,583	1.3
Transcripts, referencing a PO Number	133	0.5	90,627	0.4
Transcripts, no PO Number reference	1,110	4.0	501,812	2.0
Total Printing, Sherriff/Bailiff, Court Reporters, Transcripts, referencing a PO Number	3,070	2.9	\$929,116	3.7
Total Printing, Sherriff/Bailiff, Court Reporters, Transcripts, with no PO Number reference	20,096	20.0	\$3,409,884	13.5
Percentage of Total Printing, Sheriff/Bailiff, Court Reporters, Transcripts without PO Reference		87.1		78.6

APPENDIX B - METHODOLOGY

In conducting the audit, the audit team:

- reviewed current contracting policies, directives, and guidelines at both the central agency and departmental levels;
- interviewed CMMD contracting management and staff in headquarters;
- interviewed CFO Branch staff in Monitoring and Quality Assurance Division and in Policy, Systems and Corporate Accounting Division;
- examined data from the IFMS to analyze regional contracting activity, including the most often procured vendors, commodities, and approaches to let contracts;
- at each of the three offices visited reviewed a randomly selected sample of service contract files over \$2,000 in value to ensure compliance with departmental and TB policies and guidelines and to assess the extent to which the contracts were properly managed;
- interviewed regional corporate services personnel;
- interviewed managers and staff from the regional legal services portfolios involved with the contracting process, including members of the Regional Contracts Review Committees.

APPENDIX C – RISK ASSESSMENT GUIDELINES FOR AUDIT RECOMMENDATIONS

Examples of criteria used for assessing the risk level of audit recommendations are outlined below:

Assessment	Criteria
High	<ul style="list-style-type: none"> • Controls are not in place or are inadequate. • Compliance with legislation and regulations is inadequate. • Important issues are identified that impact the achievement of program/operational objectives.
Medium	<ul style="list-style-type: none"> • Controls are in place but are not being sufficiently complied with. • Compliance with central agency/departmental policies and established procedures is inadequate. • Issues are identified that impact the efficiency and effectiveness of operations
Low	<ul style="list-style-type: none"> • Controls are in place but the level of compliance varies. • Compliance with central agency/departmental policies and established procedures varies. • Opportunities are identified that could enhance operations.

It should be noted that, in applying the above criteria to a recommendation, Internal Audit Branch takes into consideration the nature, scope, and significance of the audit finding(s), the impact of the recommendation on the organization, and the auditors' professional judgment.