

14.**TRANSPORTATION AND PUBLIC WORKS -
PROCUREMENT BRANCH****BACKGROUND**

14.1 The Department of Transportation and Public Works is responsible for administering the Government Purchases Act and the Government Procurement Policy. Within the Department, the responsibility rests with the Procurement Branch, a section of the Department's Government Services Division (see Exhibit 14.2 on page 233). The Department assumed responsibility for government procurement in January 2001 upon the transfer of the Procurement Branch from the Department of Finance.

14.2 The strategic plan for the Procurement Branch indicates that its responsibilities include:

- ensuring that the acquisition of goods, services, construction and facilities by government departments, agencies, boards and commissions is conducted in a manner which is open, fair, consistent, efficient and competitive;
- providing operational assistance in procurement activity;
- formulating and advising on policies and procedures governing the procurement process;
- assisting municipalities, academic institutions, school boards and hospitals (MASH Sector) in their procurement activities;
- coordinating, with the Department (now Office) of Economic Development, the negotiations and administration of trade agreements as they relate to the public procurement function;
- improving the procurement process by establishing quality assurance and standards for the acquisition of both commodities and services; and
- building public confidence in the integrity of the public sector procurement process.

14.3 The acquisition of goods in government is regulated by the Government Purchases Act. The Act assigns responsibility for the acquisition of goods to the Nova Scotia Government Purchasing Agency (i.e., Procurement Branch) and applies to purchasing by all government departments, as well as any boards, commissions and agencies of government designated by Executive Council. The Act requires, except in certain defined circumstances, that purchases be tendered to ensure fair and competitive procurement by government. Tendering is performed by the Public Tenders Office, an operation of the Procurement Branch.

14.4 On January 26, 2001, government updated its policy for the acquisition of goods, services, construction, and facilities procured by purchase, contract, lease, or long-term rental. The Government Procurement Policy applies to all government departments, agencies, boards and commissions. Provincially-funded public sector entities such as academic institutions, regional school boards, district health authorities and crown corporations must also follow the policy. All

procurement must follow specified competitive processes. However, the policy also allows for alternative procurement practices, such as sole-source purchasing and restricted competitions, as long as a purchasing requirement meets conditions outlined in the policy (see Exhibit 14.6).

14.5 The Province has entered into two interprovincial agreements relating to government procurement. The Atlantic Procurement Agreement strives to eliminate any discrimination among Atlantic Canadian provincial governments in the awarding of procurement contracts to businesses operating in the Atlantic Provinces. The Agreement on Internal Trade is an accord signed by all First Ministers in Canada aiming to eliminate barriers to trade, investment and mobility within Canada. Both agreements are administered by interprovincial committees.

14.6 The Procurement Branch has a staff of 22 and a budget of \$1.2 million for 2002-03. During the 2001-02 fiscal year 50,224 purchase orders, totaling \$393.8 million, were issued (see Exhibit 14.3). However, these amounts reflect only purchases recorded on the Province's Corporate Financial Management System, and consequently do not include purchases of many government organizations with their own financial systems.

RESULTS IN BRIEF

14.7 The following are our principal observations from this audit.

- The Government Procurement Policy allows government organizations to purchase goods with a value up to \$5,000 without public tender if they obtain at least three quotations. Under Section 8 of the Government Purchases Act, the Procurement Branch must tender for the purchase of goods over \$1,000. An amendment to the Act has been drafted to increase the limit to \$5,000, but the new legislation has not been presented to the House of Assembly yet.
- The Procurement Branch has taken steps to promote a clear understanding of procurement goals and processes.
- A policy statement was drafted to guide government organizations in evaluating and conducting public-private partnership procurement. However, the policy statement was never approved by Executive Council.
- Purchase orders for procurements by government departments and agencies over \$25,000 must be approved and issued by the Procurement Branch. Procurement staff can put a transaction on hold if there are questions as to its compliance with legislation and policy. After a tender is conducted and bids are evaluated by the client organization, the organization must provide an explanation to the Procurement Branch if a bid other than the lowest priced one is accepted.
- The Government Procurement Policy applies to all Provincial government entities, including departments, agencies, boards, commissions, crown corporations, academic institutions, regional school boards and district health authorities. However, there is little external monitoring of the procurement activities of crown corporations, academic institutions, regional school boards and district health authorities. Similarly, there is little external monitoring of these entities to ensure compliance with interprovincial procurement agreements.
- Government organizations sometimes bypass the procurement process and Procurement Branch involvement by processing procurement transactions through

the accounts payable module, rather than the procurement module, of the government's Corporate Financial Management System. Procurement Branch staff monitor transactions processed through the accounts payable module for improper recording of purchases, and questionable transactions are followed up.

- Some policies relating to alternative procurement (e.g., sole-source purchasing) are not always followed by government organizations. Alternative procurement is being conducted without consultation or agreement of Procurement Branch staff. Not all alternative procurement is reported to the Procurement Branch, as required by policy.
- We found little review and challenge of alternative procurement transactions by Procurement Branch staff as long as the transaction was approved by the head of the client organization. The Government Procurement Policy does not specifically state that the Procurement Branch is responsible for controlling client organization procurement practices, and does not specify any method of resolving the issue if Procurement Branch staff challenge a decision approved by the head of a client organization. There is no requirement to report alternative procurement transactions, or even differences of opinion, to a central government organization such as Treasury and Policy Board.

AUDIT SCOPE

14.8 In August 2002 we completed a broad scope audit of the Procurement Branch of the Nova Scotia Department of Transportation and Public Works under the mandate established by Section 8 of the Auditor General Act. Our audit was conducted in accordance with auditing standards established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

14.9 The objectives of this assignment were to assess the Procurement Branch's:

- process for developing and promulgating procurement policies and procedures;
- compliance with legislation, policy and interprovincial agreements in the performance of its procurement activities; and
- accountability framework with respect to its procurement responsibilities.

14.10 Audit criteria were developed to assist in our assessment of the systems and practices of the Procurement Branch. The audit criteria were discussed with and accepted as appropriate by senior management of the Department, and are outlined in Exhibit 14.1. Our audit procedures included interviews of management and staff, testing of procurement transactions, as well as an examination of manuals, reports and other documents.

14.11 Our audit examined controls and systems of the Procurement Branch of the Department of Transportation and Public Works only. This assignment did not address procurement activities by departments and other government organizations conducted without the involvement of the Procurement Branch.

PRINCIPAL FINDINGS

Standards

14.12 The primary legislation dealing with government procurement is the Government Purchases Act. It was last revised in 1992. It is a relatively brief piece of legislation, and there are no regulations. The Act only regulates the purchasing of goods. There is no legislation to regulate the purchasing of services by government.

14.13 The last significant revision to the Government Procurement Policy occurred in 1996. This policy was developed from a white paper entitled *Fairness in Government*. The white paper was widely circulated and there was significant stakeholder consultation. The policy incorporated stakeholder comments, as well as input received from the Atlantic Procurement Coordinating Committee and the Procurement Working Group for the National Agreement on Internal Trade. The policy was revised again on January 26, 2001 to make changes to procurement threshold levels and approval requirements for alternative procurement practices. However, the changes were not extensive and were only discussed and circulated within government.

14.14 We examined the policy to see if it was consistent with the Government Purchases Act. We noted three exceptions.

- The Government Procurement Policy applies to all Provincial government entities, including departments, agencies, boards, commissions, crown corporations, academic institutions, regional school boards and district health authorities. The Government Purchases Act indicates that it applies to departments of government and, under Section 5(b), any government boards, commissions and agencies designated by Governor in Council. However, no such organizations have been designated.
- The Government Procurement Policy allows government organizations to purchase goods with a value up to \$5,000 without public tender if they obtain at least three quotations. Under Section 8 of the Government Purchases Act, the Procurement Branch must tender for the purchase of goods over \$1,000.
- The Government Procurement Policy applies to all purchases of goods and services (including construction and facility leasing). The Government Purchases Act applies only to the procurement of goods.

14.15 Each of these differences is addressed in draft legislation and regulations prepared by the Procurement Branch. However, the legislation has not yet been introduced in the House of Assembly.

14.16 The Procurement Branch maintains a policy and procedure manual. The manual was updated for the most recent changes to the Government Procurement Policy and is available to staff of all government departments and other entities (client organizations) to help them administer procurement activities. An operating procedures manual, for use by Procurement Branch staff only, was being finalized at the time of our audit. We examined the two manuals and found that they are derived from or fully consistent with the Government Procurement Policy. However, we found the manuals do not address all areas where guidance may be needed, notably: e-procurement; amendments to purchase orders; review of procurement transactions; and review and reporting of alternative procurement transactions.

14.17 The Procurement Branch has taken steps to promote a clear understanding of procurement goals and processes. There are numerous publications which are available in paper format and on

the internet (Exhibit 14.5 on page 236). The Procurement Branch provides ongoing advice and assistance to staff of client organizations involved in the procurement process. Presentations are given at various seminars and meetings, and there is day-to-day contact with individuals and groups wishing to do business with the government.

14.18 In February 2000 a study of the government's experience with public-private partnership was completed by a consultant. The consultant concluded that public-private partnering should continue to be considered for procurement projects as long as it could be clearly demonstrated that such an approach is more beneficial than traditional procurement methods, and controls exist to ensure the process is properly conducted and monitored. Upon the completion of the study, a policy statement was drafted by the Procurement Branch to guide government organizations in evaluating and conducting public-private partnership procurement. However, the policy statement was never approved by Executive Council.

14.19 We examined the processes of the Procurement Branch for ensuring procurement policy remains current with changes in technology, as well as government and business practices. In our view, the system used to plan and control policy development needs strengthening. The Procurement Branch has limited resources dedicated to this function. There are no time lines for review and updating of procurement legislation and policy. There are no formal criteria or prioritization processes to identify where the need for new or revised policy is most important. Also, once a decision is made to amend or create a new policy, there are no milestones, time lines or responsibilities established.

Compliance with Legislation, Policy and Agreements

14.20 *Monitoring and control* - The Procurement Branch is responsible for ensuring the procurement of goods, services and construction throughout government is conducted in accordance with the Government Procurement Policy. The Procurement Branch addresses this responsibility in a number of ways. Procurement staff in client organizations are provided with publications which describe and interpret procurement policies. They are informed when there are changes to procurement policies and procedures. Procurement Branch staff attempt to visit all staff involved in government procurement activities at least once each year. They are also available to answer any questions or concerns about procurement policies or procedures.

14.21 Purchase orders for purchases by government departments and agencies over \$25,000 must be approved and issued by the Procurement Branch, rather than the client organization. Procurement staff can put a transaction on hold if there are questions as to compliance with legislation and policy. After a tender is conducted and bids are evaluated by the client organization, the organization must provide an explanation to the Procurement Branch if a bid other than the lowest priced one is accepted.

14.22 The Department's Director of Purchasing reviews a daily list of tenders issued and tenders opened by the Public Tenders Office. He also reviews a monthly report of all purchase orders issued. Unusual items are followed up.

14.23 The Procurement Branch monitors complaints about specific procurement transactions or other procurement issues received from individuals or organizations wishing to do business with the government. All complaints are investigated by management and a formal response is sent to the company or individual making the complaint. A register is maintained to document the action taken to address each complaint. A copy of the complaint register is included in the annual report prepared by the Procurement Branch.

14.24 The Government Procurement Policy applies to all Provincial government entities, including departments, agencies, boards, commissions, crown corporations, academic institutions, regional school boards and district health authorities. The policy indicates that responsibility for compliance with the policy falls upon the Chief Executive Officer (CEO) of each government organization. CEOs are accountable for compliance with this policy, as they are for any other legislated or policy requirements, to the Minister responsible for the organization. However, there are no requirements that government organizations report on compliance with procurement policies. In addition, we found that while the Procurement Branch does monitor procurement by government departments and agencies which use the government's Corporate Financial Management System (CFMS), it is not involved with and does not monitor purchasing by organizations which use their own financial systems, such as crown corporations, regional school boards and district health authorities. The Procurement Branch was not able to provide us with information on the volume of purchasing by the government organizations it does not monitor. Accordingly, there is little external monitoring of the procurement activities of many government organizations which must comply with government procurement policies.

14.25 Government organizations must also comply with obligations identified in the Atlantic Procurement Agreement and the Agreement on Internal Trade. Under the Atlantic Procurement Agreement, ASH sector entities (defined to include academic institutions, regional school boards and hospitals - i.e., district health authorities) are to provide the Atlantic Procurement Coordinating Committee with quarterly reports outlining all reportable exceptions to the Agreement. However, upon agreement of all four provinces, this requirement was dropped. As well, the Procurement Branch does not monitor crown corporations and ASH sector entities to ensure compliance with interprovincial procurement agreements.

14.26 Government organizations often purchase a large number of similar goods and/or services in the span of a year (e.g., desk-top computers, professional services). In such cases it would be very time consuming to conduct a competition each time a need for such an item is identified. To aid efficiency, but retain the advantages of competitive purchasing, government organizations (individually or in groups) advertise for standing offers on certain goods and services routinely required. Once the competition has been conducted and a winning bid has been selected, the organization(s) are able to purchase from the successful bidder at the predetermined price for the length of time agreed to in the standing offer. We observed that the Procurement Branch is involved in the tendering and monitoring of standing offers.

14.27 Section 13 of the Government Procurement Policy states that all procurement activities will be subject to audit by the Procurement Branch, departmental internal auditors, or by the Auditor General. Despite this provision, there is no formal audit program for government procurement. The Office of the Auditor General and the Corporate Internal Audit section of the Department of Finance are operations independent from the Procurement Branch with responsibility for selecting and performing a wide variety audits in a large number of government entities. The Procurement Branch has procedures for reviewing certain procurement transactions, but the process is not rigorous enough to be considered auditing.

14.28 A report of all purchase orders issued is generated from the Corporate Financial Management System (CFMS) on a biweekly basis to facilitate the Procurement Branch's procurement review process. Transactions listed on the report are reviewed to ensure they adhere to procurement policy and guidelines for recording procurement transactions in CFMS. A report of all accounts payable transactions over \$1,000 is also generated from CFMS to help staff determine whether there are purchases that should have been processed through the procurement system (see paragraph 14.34). E-mails are sent to the procurement section of client organizations to question unusual transactions and there are procedures to ensure explanations are received on a timely basis. However, minimal documentation is prepared to document the scope and results of the reviews performed and

explanations received are rarely verified by an examination of documentation from client organizations. And, as discussed above, these reviews do not include purchases by organizations with their own financial systems (e.g., crown corporations, regional school boards).

14.29 We believe there could be better reporting on the results of procurement transaction reviews to senior management of the Department. A quarterly report is prepared, but it only provides summary statistical information. Commentary should be included in the reports to identify areas of concern, government organizations which appear to be regularly contravening the Government Procurement Policy, and policy initiatives to be considered to address problem areas. Furthermore, senior management does not perform any formal monitoring to ensure transaction reviews are appropriately documented, all observations have been sent to the client organizations and reasonable responses have been received.

Recommendation 14.1

We recommend that government review its practices for ensuring compliance with procurement policy and agreements. We believe either the role of the Procurement Branch needs to be expanded and its practices strengthened, or alternative measures need to be developed to hold all government entities individually accountable for procurement activity.

14.30 *Testing of regular procurement transactions* - We selected a sample of regular (i.e., non-alternative) procurement transactions recorded in the Corporate Financial Management System of the Province. We noted instances where:

- transactions were classified as regular procurement even though information obtained indicated the purchase was made using alternative procurement methods (4 of 65 items tested);
- approval from client organization staff to award tenders was not on file (2 of 65 items tested); and
- tender award information was not recorded on the internet website (5 of 65 items tested), or was recorded incorrectly (1 of 65 items tested).

14.31 We were able to examine documentation for each transaction we selected for testing. However, information received from bidders was sometimes on file at the Procurement Branch and other times on file at the client organization. Staff of the Procurement Branch often did not know where to find requested documents. Difficulties in locating documentation indicates a need for more formal documentation and filing standards. It also shows that the Procurement Branch does not always examine documentation in support of the procurement transactions it helps to administer, and is not always in a position to know that significant purchases are fully in compliance with procurement policy.

14.32 We also observed a lack of communication involving the approval of certain procurement transactions by the Procurement Branch. Transactions over \$25,000 must be approved by the Procurement Branch. However, we noted an instance where one Branch staff person's refusal to proceed with a procurement pending resolution of outstanding questions was circumvented by obtaining approval from another Procurement Branch staff member. There is no system to enable staff to know that a transaction has been questioned by another staff member.

14.33 Procurement transactions need to be recorded consistently in CFMS so transactions can be traced from the purchase requisition to the final purchase order. We observed there was no consistency in how capital construction projects, such as school construction and renovations, are recorded in CFMS. Likewise, there is no consistency in how amendments to purchase orders are recorded in CFMS. In addition, there is minimal, if any, documentation at the Procurement Branch to support changes to purchase order amounts and we identified instances where the Procurement Branch was not notified of amendments to purchase orders.

14.34 Some government payments, such as grant payments, travel expense reimbursements and lease payments, are not required to be processed through the procurement module of CFMS, because there is no competitive procurement process involved. Such payments are processed through the accounts payable module of CFMS. However, we found that client organizations sometimes bypass the procurement process and Procurement Branch involvement by processing procurement transactions through the accounts payable module of CFMS rather than the procurement module. Procurement Branch staff monitor transactions processed through the accounts payable module for improper recording of purchases, and questionable transactions are followed up. However, we noted that there are no formal policies on the types of transactions that are permitted to be recorded in the accounts payable module.

Recommendation 14.2

We recommend more guidelines be developed and communicated, and practices be strengthened, for the documentation and recording of procurement transactions.

14.35 *Testing of alternative procurement transactions* - In certain situations goods and services are obtained through alternative procurement methods. The purpose of using an alternative procurement process (e.g., sole-source buying) is usually to meet a requirement which a formal competitive process could not satisfy. Section 8 of the Government Procurement Policy lists circumstances under which alternative procurement can be undertaken (Exhibit 14.6), including:

- an emergency or unforeseeable situation;
- to ensure compatibility with existing products, exclusive licences, copyright, and patent rights;
- goods and services which can only be supplied by a particular supplier and no alternative or substitute exists; and
- work to be performed according to the terms of a warranty or guarantee.

14.36 When an alternative procurement process is contemplated by a client organization, the Government Procurement Policy requires client staff to discuss the situation with staff of the Procurement Branch. If Procurement Branch staff agree to the proposal, a joint recommendation is made to the Chief Executive Officer of the client organization (e.g., Deputy Minister). If Procurement Branch staff do not agree, alternative procurement can proceed with the approval of the CEO. In all cases, an alternative procurement practices form is to be completed, signed by the CEO and provided to the Procurement Branch.

14.37 We selected a sample of alternative procurement transactions recorded in CFMS. They were mostly transactions involving sole-source purchasing. We made the following observations.

- The section number of the policy under which the alternative procurement was undertaken was not identified in 6 of 12 items tested.
- There was insufficient information to determine if the procurement met the criteria required to be an alternative procurement transaction in 12 of 12 items tested.
- The approval of the Deputy Minister was not recorded in 4 of 12 items tested.
- The procurement transaction was not listed on the summary report of alternative procurement transactions in 9 of 12 items tested.
- The transaction was classified as an alternative procurement even though it followed the regular procurement process in 4 of 10 items tested.

14.38 We selected a sample of alternative procurement practices forms submitted by client organizations and made the following observations.

- The section number of the policy under which the alternative procurement was undertaken was not noted in 2 of 8 items tested.
- The reason for using alternative procurement methods was not sufficiently explained in 2 of 8 items tested, and/or there was insufficient information to determine if the procurement was a valid alternative procurement transaction in 3 of 8 items tested.
- Other required information was not recorded in 4 of 8 items tested.

14.39 We concluded that some policies relating to alternative procurement are not always followed by client organizations. Alternative procurement is being conducted without consultation or agreement of Procurement Branch staff. Not all alternative procurement is reported to the Procurement Branch. For example, the dollar value of alternative procurement transactions reported by client organizations to the Procurement Branch for the year ended March 31, 2001 totaled \$9 million. CFMS shows alternative procurement transactions totaled \$53 million. There was no reconciliation of these two amounts to explain the difference, and no procedures in place to ensure full reporting by client organizations.

14.40 We were informed that Procurement Branch management review a summary of alternative procurement transactions reported by client organizations, looking for any problems, trends or evidence of misuse of alternative procurement practices. However, we noted that explanations in this report for individual transactions were often insufficient to give a full sense of why alternative procurement practices were used.

14.41 All purchase orders for purchases by government departments and agencies over \$25,000 are to be approved and issued by the Procurement Branch. Accordingly, procurement staff can delay such a transaction if they believe it is not in accordance with the procurement policy. In theory, the Branch is in a position to halt inappropriate procurement transactions. However, as noted in our audit of procurement practices at the Department of Health (Chapter 9, page 159), a client organization can purchase a good or service through an alternative procurement process and prepare a purchase order after-the-fact. Further, we found little review and challenge of alternative procurement transactions by Procurement Branch staff as long as the transaction was approved by the head of the client organization, even if the Procurement Branch was not consulted as required by policy. We observed that a simple reference to 'Deputy Minister approval' in a data field in CFMS would often be sufficient to avoid any questions by the Procurement Branch. The Procurement Branch generally did not insist on having a signed form to substantiate the approval.

14.42 We observed a hesitance to challenge alternative procurement transactions in client organizations. Government Procurement Policy does not specifically state that the Procurement Branch is responsible for controlling client organization alternative procurement practices, and does not specify any method of resolving the issue if Procurement Branch staff challenge a decision approved by the head of a client organization. Furthermore, there is no requirement to report alternative procurement transactions, or even differences of opinion, to a central government organization such as Treasury and Policy Board.

14.43 Previous to January 26, 2001 Government Procurement Policy required all alternative procurement transactions to be reported to the then Policy and Planning Secretariat. This placed an element of control over higher-risk procurement practices in a central body with some authority over individual government organizations. With the change in policy, control was placed with the Chief Executive Officers of government organizations. However, no formal accountability mechanism (e.g., public reporting) was implemented for this new responsibility.

Recommendation 14.3

We recommend that government comply with policies and guidelines for alternative procurement, and that transactions be better documented. We believe there needs to be a better system to address known non-compliance with alternative procurement policies and differences of opinion between the Procurement Branch and its client organizations.

Accountability

14.44 An integral part of the accountability process is the provision of sufficient, appropriate, understandable and timely information on areas of assigned responsibility. The Procurement Branch has a relatively small number of staff, and for this reason the accountability process within the Branch involves a high degree of personal contact. Various meetings are held to discuss performance and strategy and there are a number of statistical reports prepared by staff and reviewed by management. However, at the time of our audit, many of the performance evaluations for Procurement Branch staff were two or three years behind schedule and management were trying to get evaluations up-to-date.

14.45 Staff prepare a Procurement Fiscal Year End Report for presentation to the Minister of Transportation and Public Works. The most recent Report sent to the Minister in August 2002, was for the year ended March 31, 2002. Neither the Report or a summary is presented to the House of Assembly.

Recommendation 14.4

We recommend that, in order to maintain a high level of confidence in the procurement process and ensure all procurement is carried out in an open and fair manner, there be some level of reporting to the House of Assembly and other stakeholders on procurement.

14.46 The Procurement Fiscal Year End Report is statistical in nature and lacks substantive information on the performance of the Procurement Branch and thus does not fulfill its potential as an accountability document. The Report does not contain objectives or reporting of performance against stated objectives. The Report does not contain sufficient information relating to compliance with the Government Purchasing Act and the Government Procurement Policy, a major responsibility for the Procurement Branch.

14.47 The Procurement Fiscal Year End Report contains statistics on payments to vendors which are reported under various categories. Procurement Branch staff do not believe they have identified all vendors who should be included in these statistics. There is no statement in the Report about this limitation in the information.

14.48 A business plan is a key document used to convey an organization's goals and strategies for the current and future years. The Procurement Branch has a business plan containing information on its mandate, mission, core values, strategic goals, demands to be met and long-term objectives. As part of the government business planning process, the Department of Transportation and Public Works prepares an annual business plan as well. However, the Department's 2002-03 business plan does not have much information on its procurement operations.

14.49 The business plans do not identify performance outcomes and measures related to the procurement function. As part of a Department-wide initiative, performance outcomes and measures were being developed at the time of writing this Chapter. Two performance outcomes have been identified relating to procurement - an open, fair and best value procurement process, and appropriate and cost-efficient technology procurement. Various performance indicators have been identified to monitor these outcomes.

Recommendation 14.5

We recommend continued development of performance measures, collection of supporting information and annual reporting on performance. Where possible, performance reporting should include quantitative measures compared to predetermined targets, with explanations for significant variances.

CONCLUDING REMARKS

14.50 The Procurement Branch does not have a formal process for developing procurement policies, but there is a formal procurement policy which is well-communicated to the government organizations which are required to comply with it. There are some differences between the policy and the Government Purchases Act.

14.51 We observed non-compliance with the Government Purchases Act relating to the dollar limit set for transactions which must be tendered. We observed instances of government organizations not complying with the Government Procurement Policy. A significant number of government organizations are not externally monitored to ensure they are in compliance with procurement policy and interprovincial procurement agreements. Also, there is little challenge of government agencies using alternative procurement practices, even when procurement requirements do not meet the criteria presented in the Government Procurement Policy.

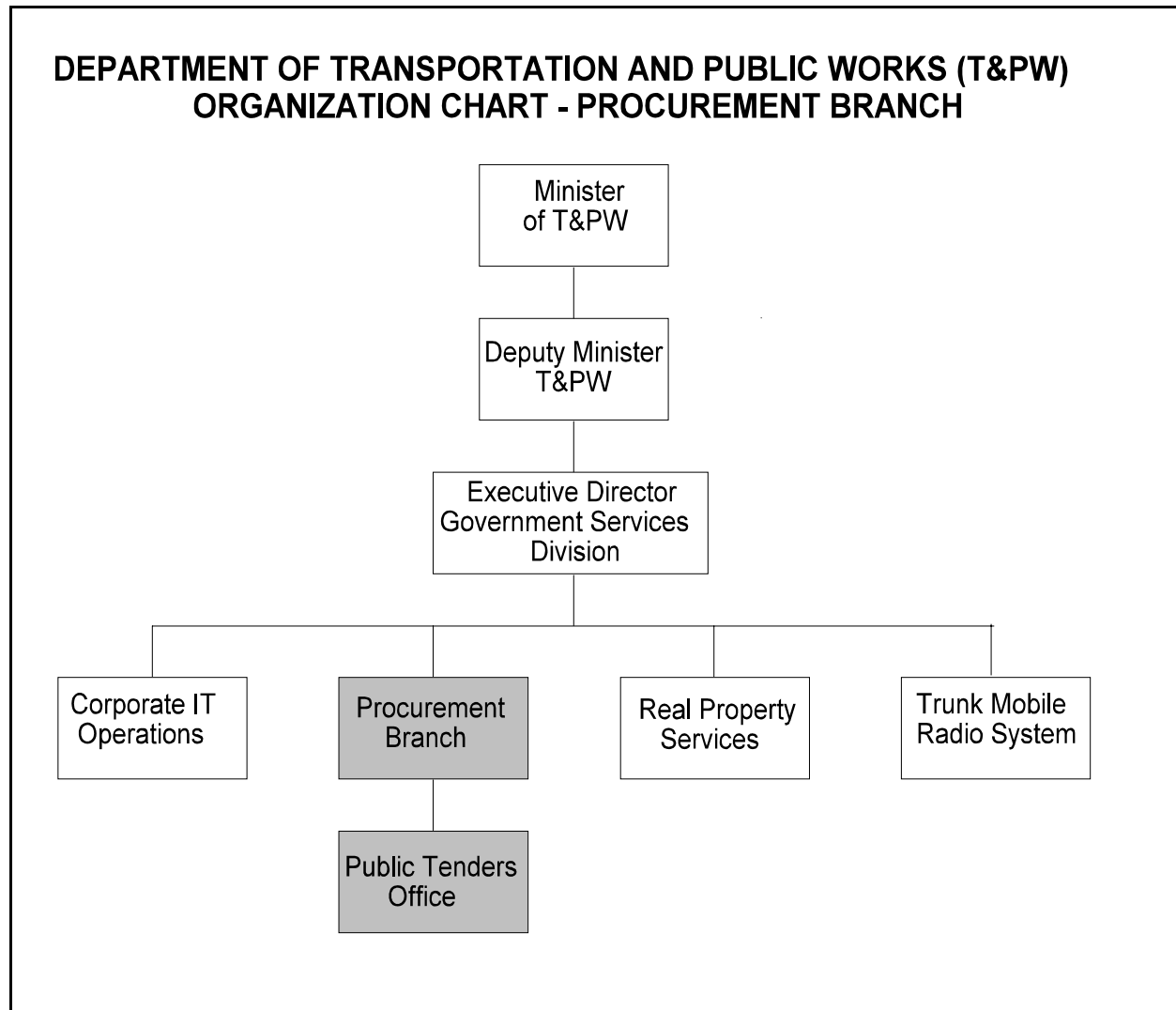
14.52 There is little reporting to the House of Assembly on government procurement transactions and the performance of the Procurement Branch.

Exhibit 14.1**AUDIT CRITERIA**

Audit criteria are reasonable and attainable standards of performance and control, against which the adequacy of systems and practices can be assessed. They relate to the audit objectives developed for an assignment and are used to design the detailed audit tests and procedures.

The following criteria were used in our audit of the Procurement Branch of the Department of Transportation and Public Works.

- *Standards* - The Procurement Branch should have sufficient information to determine where procurement policies are in need of development or change. There should be systems in place to develop appropriate procurement policy and procedures on a timely basis. There should be appropriate communication and instruction with respect to procurement policy and procedures.
- *Compliance with Legislation* - Applicable provisions of Provincial legislation and regulations should be complied with. Procurement policies should be consistent with Provincial legislation and regulations. There should be a process to enable management to monitor and be sure that key provisions of Provincial legislation and regulations are being complied with. There should be a system to ensure that reviews of procurement transactions are carried out on a regular and timely basis. There should be follow up on the implementation of recommendations from reviews of procurement transactions.
- *Accountability* - There should be adequate systems and controls to ensure the completeness, accuracy and timeliness of information reported. There should be relevant and timely reporting to inform the Minister and House of Assembly of the Procurement Branch's performance. The Procurement Branch should determine and report whether procurement legislation and policy is being properly implemented and is achieving its objectives.

Exhibit 14.2

Other positions reporting to the Deputy Minister:

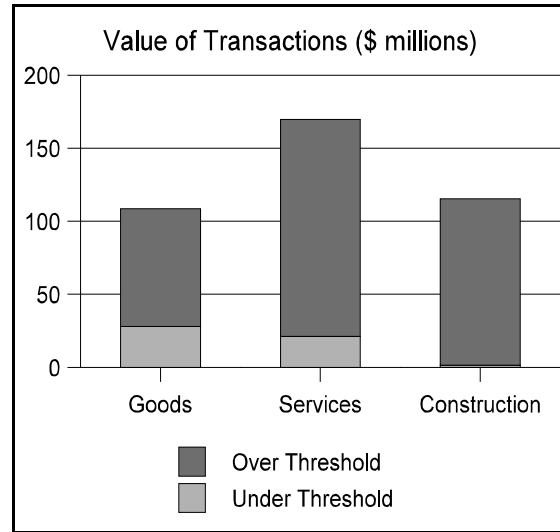
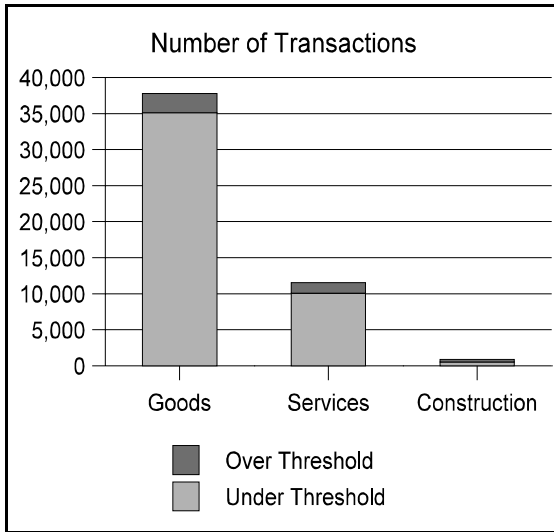
- *Executive Director of Highway Operations*
- *Executive Director of Public Works*
- *Director of Finance*
- *Director of Human Resources*
- *Director of Information Technology*
- *Director of Policy and Planning*
- *Director of Public Affairs and Communications*

Exhibit 14.3

PROCUREMENT STATISTICS		
Based on Procurement Fiscal Year End Report - April 01, 2001 to March 31, 2002		
	Purchase Orders	Value of Purchases
Goods	37,797	\$ 108,634,128
Services	11,547	169,724,671
Construction	<u>880</u>	<u>115,466,902</u>
Subtotal	50,224	393,825,701
Procurement cards		5,547,948
Lease payments on P3 schools		54,343,155
School construction		11,428,629
Rental of government facilities		30,341,764
Recurring payments		3,153,474
Accounts payable transactions		<u>23,730,876</u>
Total		<u><u>\$ 522,371,547</u></u>

Exhibit 14.4

**DISTRIBUTION OF TRANSACTIONS BY VALUE
(OVER AND UNDER TENDERING THRESHOLDS)**



DISTRIBUTION OF CONTRACTS BY COMPETITION TYPE

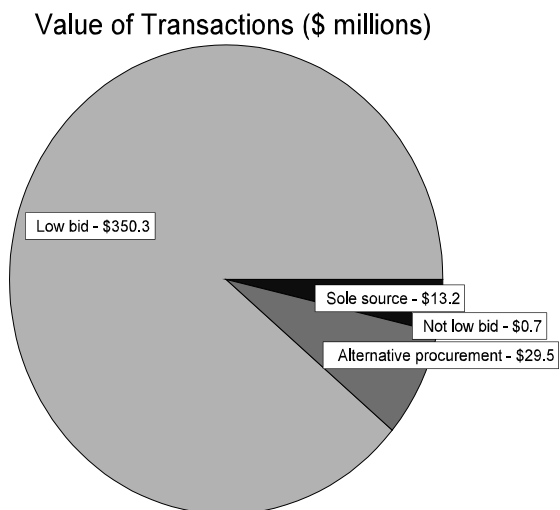
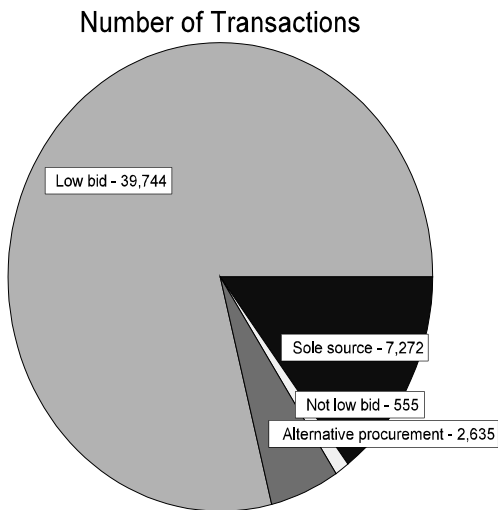


Exhibit 14.5

LEGISLATION, POLICY AND GUIDELINE DOCUMENTS FOR GOVERNMENT PROCUREMENT	
Legislation	Agreements
Government Purchases Act	Atlantic Canada Procurement Agreement
	Agreement on Internal Trade
Policies	Guides
Policy on Government Procurement	Procurement Branch Tenders Brochure
Summary and Overview of Policy	Request for Quotations
Government Procurement Process	Requests for Proposals or Expression of Interest
Province of Nova Scotia Procurement Manual / Policies and Procedures	
Environmentally Responsible Procurement Policy	Standard Instructions
Facilities Procurement Guide	General Instructions
Construction Contract Guidelines	Supplements to General Instructions
Public Sector Purchasing Contracts	
Guide to the Submission & Evaluation of Unsolicited Proposals	
Supplier Complaint and Dispute Settlement Process	
Availability of Surplus Government Assets for Non-Profit Organizations	
Government Procurement Process - ASH Sector	

Each document is available for viewing at: www.gov.ns.ca/finance/tour/policy.asp

Exhibit 14.6**EXCERPTS FROM GOVERNMENT PROCUREMENT POLICY****1. Policy Objective**

The objective of this policy statement is to establish and maintain a high level of confidence in the procurement process by ensuring that all public sector procurement is carried out in an open, fair, consistent, efficient, and competitive manner.

The Government of Nova Scotia is committed to:

- ensuring that the government's requirements for goods, services, construction, and facilities are met through an open and fair process that provides the highest degree of competition and value to the Province
- ensuring that all bidders have reasonable notice and opportunity to tender
- fostering economic development by giving every capable Nova Scotia supplier the opportunity to do business with the government
- encouraging Nova Scotia businesses to be competitive and to sustain quality product development
- adhering to the Agreement on Internal Trade and the Atlantic Procurement Agreement, which create economic opportunities for Nova Scotians
- treating out of province bidders in the same way as their jurisdictions would treat bidders from Nova Scotia
- being accountable to the public for procurement decisions

4. Procurement of Goods

Goods with an estimated value of up to and including \$5,000 will be acquired by departments at competitive prices in accordance with procedures established by the Procurement Branch of the Department of Transportation & Public Works.

Goods with an estimated value above \$5,000 will be posted on an electronic public bid notice system website. In addition, bids may also be invited from selected suppliers where required to ensure an adequate degree of competition.

Bids will be evaluated not only on the price submitted but also on such factors as quality, delivery, servicing, and the capacity of the bidder to meet the criteria stated in the bid documents. Unless there is a valid and written rationale for the contract award, available for public review, the lowest competent tender will be accepted.

5. Procurement of Services

Services with an estimated value of up to and including \$10,000 will be acquired by departments in accordance with procedures established by the Procurement Branch of the Department of Transportation & Public Works.

Services with an estimated value above \$10,000 will be posted on an electronic public bid notice system website. In addition, bids or proposals may also be invited from selected suppliers where required to ensure an adequate degree of competition.

In order to establish the best value of the services offered, bids will be evaluated on price, qualifications, experience, past performance, and the capacity of the bidder to meet the criteria stated in the bid documents. Unless there is a valid and written rationale for the contract award, available for public review, the lowest competent tender will be accepted.

Specialized Services - Procurement of specialized services may require different processes to reflect the unique nature of the service.

Insurance Services - All insurance service requirements valued at more than \$10,000 will be acquired by public tender at intervals not greater than every five years. Insurance will normally be tendered based on major insurance service categories. Major insurance services may be renewed on an annual basis up to the five-year maximum on terms satisfactory to the Province. Otherwise, the service may be put to competitive tender call at any annual renewal date.

Architectural, Engineering, and Surveying Services - Requirements for consultants for assignments with an estimated value of up to and including \$50,000 will be acquired through a public notice inviting consultants to submit corporate qualifications, to be updated at the consultant's initiative. The submissions will be in a prescribed format to facilitate the development of a departmental data base. Consultants will be selected from the departmental data base and interviewed, and a fee will be established. Consultants for assignments with an estimated value greater than \$50,000 will be selected as a result of a public advertisement and posted on an electronic public bid notice system website.

The services of these professional groups will be obtained through a qualifications-based selection process, which will include an assessment of competence, experience, cost, and other factors specific to the requirement as identified in the guidelines.

6. Procurement of Construction

Construction requirements with an estimated value of up to and including \$10,000 will be acquired by departments at competitive prices, in accordance with procedures established by the Procurement Branch of the Department of Transportation & Public Works.

Construction requirements with an estimated value above \$10,000 will be posted on an electronic public bid notice system website. In addition, bids or proposals may also be invited from selected suppliers where required to ensure an adequate degree of competition.

Construction competitions will be carried out in accordance with the Construction Contract Guidelines developed by the Department of Transportation & Public Works.

Bids may be evaluated on price, past performance, and the capacity of the bidder to meet the criteria stated in the bid documents. Unless there is a valid and written rationale for the contract award, available for public review, the lowest competent tender will be accepted.

7. Procurement of Facilities

All building lease requirements are to be acquired by way of public advertisement, in accordance with the Government's Facilities Procurement Guide developed by the Department of Transportation & Public Works.

8. Alternative Procurement Practices

Departments wishing to make use of an Alternative Procurement Practice, with the exception of an emergency situation, are to consult with the Procurement Branch to identify the most appropriate means by which to proceed with the satisfaction of the requirement. If in agreement, the Department and Procurement Branch will make a joint request to the Deputy Minister of the requesting Department who will then approve or reject the recommendation. In case or cases of a disagreement between the Department and the Procurement Branch the Department may present the proposed Alternative Procurement to their Deputy Minister for consideration and decision.

It is the Deputy Minister's responsibility to ensure that all procurements made by their Department are properly documented and recorded in the Province's Corporate Financial Management System.

Procurement processes other than those described in this policy statement may be used in circumstances such as those described below. Such processes are not to be used for the purpose of avoiding competition or to discriminate against specific suppliers. Each instance requires the prior approval of the appropriate Deputy Minister. These circumstances are:

- 8.1 an unforeseeable situation of urgency or emergency where the good, service, or construction requirement cannot be obtained by means of open procurement procedures
- 8.2 a situation where tendering could reasonably be expected to compromise government confidentiality, cause economic disruption, or otherwise be contrary to the public interest
- 8.3 to ensure compatibility with existing products; to recognize exclusive rights, such as exclusive licenses, copyright, and patent rights; or to maintain specialized products that must be maintained by the manufacturer or its representative
- 8.4 where, for technical reasons, there is an absence of competition, and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists
- 8.5 the procurement of goods or services for which there is a statutory monopoly that is controlled by a supplier
- 8.6 the purchase of goods on a commodity market
- 8.7 work to be performed on or about a leased building, or portions thereof, that may be performed only by the lessor
- 8.8 work to be performed according to the provisions of a warranty or guarantee
- 8.9 the procurement of a good or service to be developed in the course of and for a particular contract for research, experiment, study, or original development, but not for any subsequent purchases

- 8.10 the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases
- 8.11 the procurement of original works of art
- 8.12 the procurement of subscriptions to newspapers, magazines, or other periodicals
- 8.13 processes that foster the development of minority businesses
- 8.14 processes that foster the development of sheltered workshop programs
- 8.15 goods intended for resale to the public
- 8.16 goods and services from persons with disabilities, philanthropic institutions, or through employment equity programs
- 8.17 services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation
- 8.18 medical services for persons in the care and custody of the Province
- 8.19 procurement of goods or services from another level of Government

DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS' RESPONSE**General Comments:**

The Procurement Branch, Department of Transportation and Public Works, appreciates the extensive audit done by the Auditor General's staff, and their helpful approach was certainly of value in strengthening the procurement operations of government. Action on all items is either underway or has been included in our 2002-2003 workplans.

Paragraph 18

The Public Private Partnership (P3) draft policy booklet remains as a draft as the P3 process is not currently in use on any projects. The document is available should any public body wish to pursue the P3 arrangement at any future time. For non P3 projects, a Request for Proposal process is used.

Paragraph 19

The Procurement Branch reviews its policies and procedures as required and updates the website. The suggestion by the Auditor General is appreciated and will be included in our annual work plans so that the review is documented and changes in documents can be kept on file for historical purposes. We have included this in our business plans so that the review is done annually each January.

Paragraph 24

Agree - However, public bodies have the responsibility to their respective Ministers to comply with the Government's policy objective of fair and open procurement. The Procurement Branch has established good working relationships with these public bodies; three examples being the use of the Procurement Branch website for advertising tenders, discussions on procurement policy applications and assistance in resolving complaints.

Paragraph 25

Agree - All four Atlantic provinces agreed that the reporting by MASH Sector entities was not required. There have been no complaints about Nova Scotia MASH Sector purchases from other jurisdictions, and it has been more effective to concentrate on joint purchasing advantages such as school buses, and being a source of advice and assistance to these other publicly funded organizations.

Paragraph 26

The Procurement Branch is responsible for all standing offers for government departments. The standing offer requirements are normally reviewed before their expiry dates to determine if the standing offer should be re-tendered/renewed or cancelled. Suppliers to the information technology standing offers have all been advised that contracts will be terminated if prices held on the database are not updated. The system flags the vendor with a warning if prices are not updated monthly. The Procurement Branch also does periodic surveys to ensure the technical information is up to date. The most recent survey was done in June 2002.

Paragraph 27

The analysis by the Procurement Branch is a monthly review of compliance with the Procurement Policy. This compliance review consists of:

- a. *Director of Purchases monthly review of all CFMS Procurement Module transactions (purchase orders) for all departments of government;*
- b. *Staff review of transactions for CFMS procedural compliance, and advising users on observations;*
- c. *Staff review of accounts payable transactions to identify transactions that should have been recorded in the Procurement Module.*

These compliance reviews have proven to be very effective in reducing the number and types of observations in CFMS operations. We have also documented our compliance review processes and have sent this information to all Directors of Finance to indicate the level of scrutiny that is applied to their respective department's transactions.

Paragraph 28

The Procurement Module and accounts payable monthly reviews have proven to be very effective as a means of correcting any procedure not being followed correctly by departments. This is considered an effective way to train CFMS users to ensure they follow procedures. The Procurement Branch has reviewed the compliance documentation and has instituted a monthly report that is reviewed by the Director Purchases.

Paragraph 29

As mentioned earlier, all Procurement Module transactions are reviewed monthly. Observations have been brought to the attention of departments. Compliance reviews and the reporting regime guidelines will be incorporated in our internal procedures document. The Procurement Branch recently sent a document to all Directors of Finance providing details of our compliance review process and reporting mechanisms.

Recommendation 14.1

Agree - Policies and procedures are in place, including those used in the CFMS, to allow departments to follow the Procurement Policy. Ensuring adherence to policy will require a review of current resources assigned to this task, with a view to strengthening this compliance review effort, or seeking support from the government's internal audit group to move procurement to one of their major focal points in departmental audits.

Paragraph 31

The documentation on any procurement is in three places; the Procurement Branch, with the client department and with the vendor. All three sources contain different documents, depending on their needs, eg. Procurement Branch files do not contain invoices. Construction tenders are a good example where the majority of documents are held by the department, however, CFMS procedures require the Procurement Branch approval of the initial contract and any amendments. In addition, documentation related to delegated purchases of \$5,000 for goods, \$10,000 for services and construction would be held by departments to support those purchases.

Paragraph 32

Procurement Branch staff approve purchase orders over \$25,000 for the departments assigned to them. Internal procedures will be amended to address the need to verify approvals with the appropriate buying group supervisor or seek direction from the Director Purchases prior to approving the purchase order.

Paragraph 33

This has been a discussion point on construction contracts and the current process is that awards are approved by the respective engineering group. The Procurement Branch issues the CFMS purchase order after reviewing the award recommendation. Amendments are recorded in the CFMS as soon as received from the engineering group. Although there are two methods of amending contracts, all amendments are entered in the CFMS. As suggested by the audit, a written protocol for amendments is being prepared by the Procurement Branch to cover construction contracts.

Paragraph 34

Procurement Branch has prepared a list of typical accounts payable transactions, eg. travel, fuel payments, grants. A monthly review covers any transactions that should be in the Procurement Module and departments are advised accordingly. An annual outreach program with departments covers the procedures to distinguish between procurement entries and accounts payable entries. The Comptroller, Department of Finance, has recently set up a joint Finance/Procurement working group, chaired by the Director of Purchases to review procedures for procurement and accounts payable, and provide recommendations for change.

Recommendation 14.2

Agree - These activities will be strengthened in our business plans, and will involve more training and outreach efforts, including augmenting the training currently being given to all new users of CFMS. It is also a subject being reviewed by the recently formed Procurement/Finance Review Group.

Paragraph 37

All alternate procurement forms for sole source purchases are reviewed by either the Director of Purchases or a senior purchasing supervisor, prior to logging into the report format.

Paragraph 38

Agree - For the most part, alternate procurement/sole source intentions are not discussed with the Procurement Branch prior to contractual commitment. A joint Procurement/Finance working group has been struck and one of its tasks will be to review the alternate procurement process and make recommendations.

Paragraph 39

The dollar figures are taken from the Procurement Branch Annual Report showing data extracted from the CFMS system. The internal log in the Procurement Branch shows only the alternate procurements reported by departments. A review of CFMS reports shows that further outreach and training for users is required, for example, users often record a purchase from a standing offer as sole source, as it is a purchase from a single company, even though the creation of the standing offer was done through a competitive process.

Paragraph 40

Procurement Branch, during its monthly compliance checks, has found the use of alternate procurements requires a regular outreach/training program for users. An outreach project was carried out in June 2002, focusing on this area. In addition, the CFMS training syllabus on procurement will be reviewed to determine if more information is needed on how to record this type of procurement in the corporate system.

Paragraph 42

There is no requirement in the Government Procurement Policy to report to Treasury Board on alternate procurements. There is no evidence to indicate deputy ministers are abusing the alternate procurement process. The only other method of controlling alternate procurements would be to have them all approved by the Purchasing Agency, however, this would require additional staff resources that are not authorized or FTE's not funded.

Paragraph 43

Accountability for alternative procurement practices rests with the deputy minister or CEO of each department/agency as specified in the Procurement Policy. It is our experience that deputy ministers/CEO's are aware of their responsibilities under the Procurement Policy. Procurement Branch has issued seventeen process/procedure documents and promulgated them via the Branch website to support the processes throughout government.

Recommendation 14.3

Agree - Action has been taken by two means; first, the topic will be part of the current Procurement/Finance review of CFMS procedures; second, there will be increased training and outreach to departments on alternate procurements. One outreach session was done in June 2002.

Paragraph 44

Agree - Performance reports will be done annually.

Recommendation 14.4

The Annual Report is presented to the Minister of Transportation and Public Works who may choose to present it to Cabinet or the House of Assembly. The report is also sent to the Auditor General's office for information. The report for next year and follow on years will be amended to include the record of all alternate procurements (un-tendered contracts) approved by the deputy ministers of the departments of government.

Recommendation 14.5

Agree - The Annual Report format will be amended to include a section for alternate procurements, as well as a summary of compliance reviews, training and outreach efforts done through the year. It will also report the annual review of all policy and procedure documents now scheduled for January 2003.
