

3.

PROCUREMENT

BACKGROUND

3.1 The Government Purchases Act regulates the acquisition of goods in government. The Act assigns responsibility for acquisition of goods to the Government Purchasing Agency for the departments of government, and any board, commission or agency of government designated by Executive Council. The Public Tenders Office has responsibility for administering public tenders for goods and services over certain dollar limits. It also posts tenders and requests for proposals on the electronic bid notice system (EBNS) for departments which do not have direct access to this microcomputer-based tender information service. Both the Government Purchasing Agency and Public Tenders Office are part of the Procurement Branch of the Department of Finance.

3.2 The strategic plan of the Procurement Branch states:

“The Procurement Branch has responsibility for ensuring 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. The role of the Procurement Branch is to provide operational assistance in procurement activity; to formulate and advise on policies and procedures governing the procurement process; to assist municipalities, academic institutions, school boards and hospitals (MASH Sector) in their procurement activities; to coordinate, with the Nova Scotia Economic Renewal Agency, the negotiation and administration of trade agreements as it relates to the public procurement function; to improve the procurement process by establishing quality assurance and standards for the acquisition of commodities and services; and to build public confidence in the integrity of public sector procurement processes.”

3.3 On January 1, 1996, the government released a *Policy on Government Procurement*. The Policy’s objective is “to establish and maintain a high level of confidence in the procurement process by ensuring that procurement is carried out in an open, fair, consistent, efficient and competitive manner.” The text of the objectives section of the Policy has been reproduced as Exhibit 3.1 on page 41. The Policy applies to all departments, agencies, boards and commissions effective January 1, 1996. Provincially funded public-sector entities such as academic institutions, school boards and hospitals (ASH Sector) must follow the policy effective June 1, 1996. The Policy does not, at present, apply to municipalities. For the purposes of the remainder of this chapter, the ASH Sector will include crown corporations.

3.4 The procurement of goods, services, construction, and facilities in government may be accomplished through the issue of an invitation to tender (ITT), a request for proposals (RFP) or through the use of a cooperative business solution (CBS) procurement process. An ITT is used when the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria and specifications. An RFP is used when a supplier is invited to propose a solution to a problem which has predefined criteria. The selection of the successful proposal is then based on the effectiveness, value and price of the proposed solution. The CBS process is used to address well-defined business problems for which the client has no preconceived solution. A supplier is selected, on the basis of qualifications and capability rather than price, to form a business alliance of shared risk, resources and benefit between the supplier and government. The goal is to develop an innovative and creative solution which provides fair value to both government and the supplier.

3.5 Limited resources have made it necessary for government to explore innovative ways to provide high quality services to the public and develop modern infrastructures. Public-private partnering (PPP) has been identified as one means of achieving this goal. Public-private partnering is characterized by the government and a partner establishing a formal relationship that shares the costs, risks and rewards on a project. These arrangements may involve varying degrees of private sector participation. Once it is decided to enter a PPP arrangement, the potential partners are identified through an RFP, CBS or a sole-source procurement process. However, whatever process is followed, it is important that the objectives of the *Policy on Government Procurement* are followed to ensure an open and fair process. We decided to include public-private partnering in the scope of this year's procurement audit.

3.6 The Procurement Branch is responsible for the procurement of goods in excess of \$1,000 and administering the public tenders for services and construction valued in excess of \$50,000 and \$100,000 respectively. During 1995-96 the Procurement Branch administered procurement of goods and public tenders for services and construction in excess of \$300 million.

RESULTS IN BRIEF

3.7 The following are the principal observations resulting from our examination.

- The Procurement Branch has taken significant steps to design and implement improved controls over the procurement process in the past few years. Through administrative refinements currently under development, staff expect that most outstanding control issues will be addressed within the next fiscal year.
- We reviewed a sample of CBS procurements. Our conclusions and recommendations were consistent with a majority of those identified in the Procurement Branch's 1996-97 internal review of the CBS process. The Branch's review was more detailed in certain areas which resulted in additional recommendations. Both reviews found instances where the CBS process was not properly utilized and all requirements in the process guidelines were not being followed. However, most of these deviations were not significant. As a result of these reviews, the Procurement Branch plans to release revised guidelines by April 1, 1997 which will provide improved guidance to departments with respect to the CBS process.
- At present there are no policies or guidelines established for government when considering and executing public-private partnerships. These are required to ensure efficient and effective arrangements. While steps have been taken towards addressing this concern, further efforts are required. In July 1996, the Executive Council approved the establishment of a Public-Private Partnering Task Force to champion and guide PPP in the Province and to assign responsibility for coordinating PPP to the Nova Scotia Economic Renewal Agency. As of January 1997, this task force had not been developed. Staff are in the process of searching for a chairperson to oversee the task force. The plan is to have the task force operational in 1997-98.

AUDIT SCOPE

3.8 The objectives of this assignment were to:

- review the internal controls established for the procurement function in government;

- ensure the CBS procurement process was properly utilized and that procurements using the CBS process complied with relevant guidelines; and
- review and assess the policies and guidelines established for PPP to determine if they ensure efficient and effective arrangements.

3.9 Our approach included interviews with senior management and staff of the Procurement Branch of the Department of Finance and the Nova Scotia Economic Renewal Agency. We examined relevant reports, proposals, procedure manuals, draft legislation and other documents.

3.10 We tested the operation of the controls over the procurement function which are administered by the Procurement Branch. We did not test the controls which are performed within each department, board, commission, or agency of government. The controls in place within ASH sector organizations and crown corporations were not reviewed during this audit. Audits of these entities, by this Office, may have included a review of procurement practices and controls. In such instances any procurement-related observations are reported in the Chapter dealing with the particular audit.

3.11 A new corporate financial management system (CFMS) for government is planned to be operational effective April 1, 1997. This system, combined with other process improvements the Procurement Branch has made, should enhance controls and accountability in government procurement. We could not audit the controls to be established with the CFMS since the processes to be followed have not been finalized and the system will not be operational until April 1997. Our conclusions about these controls are based upon discussions with staff and a review of draft documentation about how the system is to operate.

PRINCIPAL FINDINGS

Internal controls

3.12 *Overview* - We reviewed controls over the procurement function in government to ensure a fair, open and economical process is followed. This is the main objective of the Procurement Branch. We found the Procurement Branch has taken significant steps to improve control over the procurement function in the past few years and improvement continues to be an ongoing process.

3.13 *Controls* - Some of the controls we identified during our review include:

- *Policies and procedures* - The *Policy on Government Procurement* describes responsibilities with respect to the government procurement function and the processes which must be followed. It clearly demonstrates, to all involved, the integrity and ethical values expected. Draft amendments to the Government Purchases Act and Regulations and draft process and procedure manuals have been developed which will further strengthen procurement procedures.
- *Objectives* - The Procurement Branch has documented objectives and a strategic plan to guide efforts in achieving those objectives. Risks which could impact on the achievement of the Branch's objectives have been considered in the development of policies, processes and procedures to date and in the development of the strategic plan.
- *Feedback mechanisms* - There are adequate feedback mechanisms in place to support the flow of information between the Procurement Branch and others involved in the procurement process to ensure the Branch's objectives are met. This would include

providing suggestions for improvements and complaints as to non-compliance with policies and procedures.

- *Procurement of goods* - The Procurement Branch is responsible for the procurement of goods in excess of \$1,000. Through the central procurement of goods and the use of purchase requisitions and purchase orders, there are adequate checks and balances in place to ensure an open, fair and economical procurement process.

3.14 *Opportunities for improvement* - During our review we identified some opportunities where further improvements could be achieved including:

- *Reporting* - The *Policy on Government Procurement* requires Priorities and Planning Committee approval of all procurements which are sole-sourced, unsolicited proposals, or are awarded to other than the lowest tender, and approvals given must be reported to the Procurement Branch. However, the total procurement transactions in government is not accumulated and reported by the Province's current accounting system and there is no reporting to the Legislature or the public of exemptions permitted. To address this, Procurement staff have defined reporting requirements in the draft regulations and process manuals which would improve the flow of information for monitoring and accountability purposes. As well, the CFMS will provide the accounting information which is currently unavailable.
- *Outcome measures* - In its 1997-98 operational plan, Procurement included a requirement to develop outcome measures and an associated tracking system. While we recognize this is not a simple task, it is an important one for achievement of the objectives of the Branch. We encourage the Procurement Branch to complete this undertaking during the 1997-98 fiscal year.
- *Vendor complaints* - During our review of a sample of complaints, we found no instances where follow-up action was not appropriate or timely. However, in our view, a formal tracking and reporting process would support improvements in the accountability and overall control framework of procurement activities. This would include establishing a regular and formal process where the number and nature of complaints received, the departments involved, the follow-up action taken and the time frame for resolution are reported to the Executive Director of Procurement.
- *Procurement of services* - Responsibility for the procurement of services has largely been delegated to departments. Improvements in the control over the procurement of services, to ensure the process is fair, open and economical, are required. This includes the establishment of appropriate procedures to ensure specifications do not limit competition or exceed the needs of the department and that vendors being selected will be able to supply quality services. The Procurement Branch has identified this area as a priority and has undertaken a number of projects designed to ensure suitable practices are followed and controls are in place. These include the implementation of a quality assurance group, the creation of a procedure manual and draft procurement process guidelines, the release of RFP guidelines, and the implementation of an RFP evaluation practice by the Procurement Branch. As well, the new CFMS will provide the systems support to ensure there are adequate controls in the procurement process.

Cooperative Business Solutions

3.15 *Overview* - In 1994-95, the government introduced a new procurement method designed to assist departments in finding solutions to business problems. Traditional tenders and requests for proposals require detailed specifications for the goods or services required. This is only possible if the departments are able to precisely define their needs. Sometimes departments require more assistance from a vendor to determine the nature of a product or a service required to meet the department's needs. The Cooperative Business Solutions procurement method was designed for these situations. The challenge is to ensure there is an appropriate policy and control framework to support a fair and open process and ensure fair value is obtained.

3.16 The former Department of Supply and Services was responsible for developing the CBS process and guidelines, and initiated all the projects which are now in progress. Responsibility for the management of the CBS process was transferred to the Procurement Branch of the Department of Finance late in the 1995-96 fiscal year. The Procurement Branch has not approved any projects for the CBS procurement process since it took over administration. The Procurement Branch has determined that all projects brought forward as potential CBS projects could be achieved through a traditional request for proposals and accordingly the RFP process has been applied in these circumstances.

3.17 *Review of projects* - At the time of our audit, there were eight CBS projects which had been initiated. We reviewed one of these projects, Department of Justice - Registry of Joint Stock Companies Redefinition, last year and found it was in compliance with the CBS guidelines to the stage reviewed during that audit. This year we reviewed the six other projects which had produced signed contracts for the initial phase of the project. One project had not reached that stage yet. We also reviewed the Department of Justice project to determine if a post-implementation review was completed. The results of this review are discussed in paragraph 3.21.

3.18 Four of the six new projects reviewed did not comply with some requirement of the CBS guidelines. However, most of these deviations were not significant and the actions taken did not interfere with ensuring a fair and open procurement process. The Department of Transportation and Public Works - Management Information System had what we believe to be a significant deviation. The Priorities and Planning Committee did not approve the contract reached for phase one of the project. When a contract was created at the end of phase two of the project, Priorities and Planning Committee approval was obtained for that phase.

3.19 *Guidelines* - When the Procurement Branch took over responsibility for the CBS procurement process, it undertook an internal review of the process to identify any weaknesses in the procedures followed and to make recommendations to improve its efficiency and effectiveness. A report was prepared which included recommended changes to the CBS guidelines. We agreed with a majority of the recommendations in the Branch's report. The Branch's review was more detailed than ours in some areas and resulted in more recommendations. We also identified additional concerns with respect to control of scope and contract changes in CBS projects. Our concerns about scope and contract changes were discussed with Procurement Branch staff and they indicated these will also be addressed in the revisions to the guidelines. The revised guidelines are planned to be released by April 1997. There were five principal aspects of the current guidelines which we identified as requiring improvements.

- *Shared risk, resources and benefits* - The CBS process is supposed to be used by government to select a supplier with whom to form a business alliance of shared risks, resources and benefits resulting in a cooperative or partnership approach to the initiative. The existing guidelines are unclear with respect to this requirement. Of the six projects we reviewed this year, we found two where these circumstances did not exist.

- *Commitment of funds* - When a preferred supplier is selected, it is not an award to supply goods or services but the award of an opportunity to negotiate with the department to find a solution to its problem. As a result, the department should not purchase anything from the supplier unless the Procurement Branch is notified. Procurement will determine appropriate action which complies with the *Policy on Government Procurement*. These points are unclear in the current guidelines. We found one project where a purchase of \$79,000 was made without notifying the Procurement Branch.
- *Reference checks* - The CBS guidelines require that the references provided in the responses to the RFPs be checked. They do not, however, require that documentation be maintained on the results of this process. Of the six projects we reviewed, we found three where there was no documentation to support the results of the reference checks.
- *Negotiation time frames* - There needs to be additional guidance provided with respect to the negotiation stage of the CBS process. We examined four projects where the length of negotiations ranged from eight and a half months to eleven and a half months. There were a number of reasons identified, by departmental staff, for these delays including a lack of understanding by the supplier and the department about the CBS process, departmental inexperience in negotiations and inconsistent staffing of the negotiation team by the supplier and the department. Unnecessarily long negotiation time frames could result in extra costs for a project.
- *Scope and contract changes* - CBS guidelines should clearly indicate the process to be followed when a significant change is made in the scope of or contract for a project once it has been approved by the Priorities and Planning Committee.

3.20 *Fair value* - The revised CBS guidelines will stress the need to clearly define goals and outcome measures for a CBS project in the initial steps of the process. From our review of the CBS projects initiated to date, it is apparent that staff within the departments recognize the need to measure the outcomes of a project but the inclination is to leave this until the projects have progressed past initial stages. There were some outcome measures identified for the projects initially but not for all goals identified. We acknowledge that the identification of outcome measures is a challenging activity, especially at the beginning of a CBS project, but one which is necessary to allow for adequate accountability and the measurement of fair value obtained. The outcome measures identified early in the process do not have to be final. They should be allowed to evolve as the parameters of the project are more clearly defined. Fair value obtained is a key concern for CBS procurements since the proposals received are evaluated on qualifications and capabilities rather than price.

3.21 The Department of Justice - Registry of Joint Stock Companies Redefinition project is the only project to date which has been completed. The project was completed in July 1996. A post-implementation review has not been completed yet and, therefore, it is not possible to conclude whether fair value was obtained.

Public-Private Partnering

3.22 *Overview* - In the 1996-97 Budget Address, the Department of Transportation and Public Works was identified as having lead responsibility for creating new public-private partnerships in the Province. In July 1996 the Nova Scotia Economic Renewal Agency was assigned responsibility for coordinating public-private partnering (PPP) for government. Government's goal in using PPP

is to provide government services and infrastructure more quickly, efficiently and/or more cost effectively while encouraging sustainable economic growth.

3.23 *Inventory of projects* - Government activity in this area has increased significantly over the past few years and it is the intent to expand partnering activities. However, there is no up-to-date inventory of PPP projects which have been initiated by government. The government is accountable for the results of those projects and as such should be able to provide a list of all projects initiated and the progress and results of the arrangements. This should be addressed with the establishment of the Public-Private Partnering Task Force which is discussed in paragraph 3.25. It is intended that this Task Force will be involved with all significant PPP projects and these projects will be inventoried by the Task Force.

3.24 *Policies and guidelines* - There are no formal policies or guidelines established with respect to these partnerships. In order for the government to avoid or minimize potential risks involved in PPP, the process followed must be formalized, with a comprehensive policy framework and guidelines established. These guidelines should include criteria for identifying suitable PPP opportunities, evaluating proposals received, training requirements, risk identification and management, content and monitoring of agreements, an accountability framework, and post-implementation reviews.

3.25 Staff have recognized this weakness and have taken steps to address it. In August 1995 a discussion paper on public-private partnering was released to obtain feedback. This paper suggests some key components of a comprehensive corporate strategy and guiding principles to consider. The responses received from this discussion paper were considered in the creation of a proposal for PPP which was approved by the Executive Council in July 1996. This proposal addresses the need for formal policies and guidelines. It calls for the establishment of a Public-Private Partnering Task Force to champion and guide PPP in the Province. This Task Force will be in existence for approximately two years and according to the proposal will be responsible to:

- *"coordinate, promote and set standards for partnering initiatives;*
- *provide a focal point for proposals by government departments, the private or not-for-profit sectors and evaluate proposals against conditions for success;*
- *develop strategies, principles and guidelines in areas such as human resources, taxation, communications, legislative and regulatory changes and best practices for partnering;*
- *develop and promote educational and professional development programs across government including identifying people within each department to act as a liaison;*
- *promote partnering within Nova Scotia and on behalf of the Province in the national and international marketplace;*
- *seek out partnering opportunities and identify ways to enhance partnership projects currently under way; and*
- *examine the feasibility and sustainability of financial vehicles..."*

3.26 As of January 1997 a Public-Private Partnering Task Force had not been established. Staff are in the process of finding a Chairperson to oversee the Task Force. It is hoped that the Task Force will be operational in 1997-98.

3.27 According to staff of the Nova Scotia Economic Renewal Agency, the public-private partnering activities undertaken by government to date have been uncoordinated and unfocused, with individual departments assuming responsibility for managing the process and working in isolation. The scope of our audit did not include reviewing the practices followed in each PPP project. We did review the Highway 104-Western Alignment project. See Chapter 11, page 123 for the results of that review.

Other

3.28 *Emergency Health Services Air Medical Transport Program Request for Proposals* - In January 1996 a request for proposals (RFP) was issued for program management services for a comprehensive, fully integrated air medical transport program. It is estimated that the cost of these services will be greater than \$8 million over five years. None of the four supplier proposals submitted were accepted because they did not meet the RFP requirements.

3.29 We found there are no documented guidelines to follow when there are no successful responses to a tender call. Staff of the Procurement Branch indicated that the process followed depends on the situation and could include the RFP being re-tendered, cancelling the requirement or assessing a sole-sourced solution.

3.30 In this instance, the situation was appropriately considered to be an emergency and the Department of Health began negotiations with the top ranked vendor resulting from the RFP. Subsequently the second ranked vendor became involved in the negotiations and a contract between the Province and these two vendors was approved by the Priorities and Planning Committee as a sole-sourced procurement.

3.31 We recommend that guidelines be developed to ensure a consistent, fair and open process is followed when there is no successful response to an RFP.

CONCLUDING REMARKS

3.32 Significant improvements in the controls over the government procurement function have been made in the past few years. While there are some weaknesses in the present controls, steps have been taken towards eliminating a majority of them.

3.33 At this point, it is still difficult to determine if fair value has been obtained with the use of the Cooperative Business Solution procurement method. However, the Procurement Branch has taken significant steps to ensure fair value is obtained in future CBS projects.

3.34 With government activity in public-private partnering increasing in the past few years and the government's intention to expand its activity in this area, it is important that formal policies and guidelines be established to take maximum advantage of the benefits and avoid or minimize the risks involved. The establishment of the Public-Private Partnering Task Force is critical to addressing these concerns. We urge the Nova Scotia Economic Renewal Agency to complete the establishment of this Task Force on a timely basis.

*Exhibit 3.1***EXTRACT FROM
POLICY ON GOVERNMENT PROCUREMENT****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 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*
- *being accountable to the public for procurement decisions*

