

3.

PROCUREMENT - FOLLOW-UP

BACKGROUND

3.1 The Government Purchases Act controls 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 Government Purchasing Agency is part of the Procurement Branch of the Department of Finance.

3.2 On January 1, 1996, 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 32. 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, hospitals (ASH Sector) and crown corporations must follow the policy effective June 1, 1996. The Policy does not apply to municipalities. According to the Policy "*The Minister of Supply and Services is responsible for promoting and implementing this policy.*" This responsibility was subsequently assigned to the Department of Finance through its Procurement Branch.

3.3 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 the municipalities, academic institutions, school boards and hospitals in their procurement activities; to coordinate, with the ERA [Department of Economic Development and Tourism], 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."

3.4 The Procurement Branch is also responsible for managing the cooperative business solution (CBS) procurement process which is designed to assist departments in finding solutions to well defined business problems for which they have 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 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.

3.5 Resource constraints have made it necessary for government to explore alternatives to provide high quality services to the public and develop modern infrastructures. Public-private partnering (P3) has been identified as one means of achieving this goal. P3 is characterized by the government and a private sector organization establishing a formal relationship that shares the costs, risks and rewards on a project. Once it is decided to enter a P3 arrangement, the potential partners are identified through a procurement process. Whatever process is followed, it is important that the

objectives of the *Policy on Government Procurement* are met to ensure an open and fair process. The Department of Economic Development and Tourism (ED&T) was responsible for coordinating P3 for government. Subsequent to our review, the Priorities and Planning Secretariat recommended that the Department of Transportation and Public Works assume a larger role with respect to this responsibility.

3.6 Our 1996 Report included a chapter on the results of our review of internal controls established for the procurement function in government, including CBS, and policies and guidelines established for P3. In November 1997, we completed a follow-up review to obtain information on the status of action taken or planned with respect to the various comments and suggestions included in last year's Report.

RESULTS IN BRIEF

3.7 The following are the principal observations resulting from this assignment.

- The Procurement Branch continues to take significant steps to improve controls over the procurement process. The Branch has taken action on all the opportunities for improvements identified in our Report last year. The implementation of formal reporting on procurement activities and exceptions is to be in place by March 31, 1998.
- Steps have been taken to address the need for a strategy and guidelines for managing P3 within government. However, at the time of our review, further steps were required. A division within the Department of Economic Development and Tourism was established to address this need and since its inception, a number of related actions were initiated by the division. Some guidelines have been documented, throughout government, concerning certain aspects of school construction using P3. These could be used to some extent in other P3 projects. The P3 division of ED&T was working on some guidelines relevant to all P3 projects. However, at the time of our review, these were in draft form and did not cover all aspects of the guidelines required. Subsequent to our review, the Priorities and Planning Secretariat recommended the Department of Transportation and Public Works assume a larger role and responsibility for P3 in government.

SCOPE OF REVIEW

3.8 The objective of this follow-up review was to determine the action taken or planned by the Departments of Finance and Economic Development and Tourism to improve controls within the procurement function and P3 activities within government, respectively.

3.9 Our procedures included interviews with selected members of management of both departments and a review of supporting documentation concerning actions taken or planned. We acknowledge the fact that the Department of Finance undertook the initiative to prepare a formal response to observations made in our 1996 Report concerning areas of Department responsibility. This document was beneficial in completing our 1997 follow-up review.

3.10 This assignment did not include a review of compliance with government procurement policies and procedures within specific departments or the ASH sector. This was considered as a potential objective in all assignments undertaken by this Office. Any procurement-related observations are reported in the chapters related to particular assignments.

PRINCIPAL FINDINGS

Management Controls within the Procurement Function

3.11 *Overview* - The Procurement Branch has taken significant steps to design and implement improved controls over the procurement process in the past few years and improvement continues to be an ongoing process. Last year's chapter identified opportunities for further improvements with many of these being addressed through planned activities of the Branch.

3.12 *Policies and procedures* - The establishment of adequate policies and procedures for procurement in government has evolved over a number of years. Prior to the release of the *Government Procurement Policy* in January 1996 there were various policies in government relating to the acquisition of goods and services. However, not all services were covered by those policies, some aspects of the policies were unclear, and there was inconsistency among the policies. The release of the *Government Procurement Policy* in January 1996 addressed these problems.

3.13 The Procurement Branch has taken further steps to ensure a clear understanding by all involved in the procurement process as to processes and procedures to be followed to ensure a fair and open process. This has been done through the creation of numerous publications. As of November 1997, some had been released while others were in draft form. Exhibit 3.2 on page 33 summarizes the list of publications and when they were or were planned to be available as guidelines for government and the ASH sector.

3.14 *Reporting* - In our Report last year, we noted that the total procurement transactions in government were not accumulated and reported and there was no reporting to the House of Assembly or the public of exemptions permitted.

3.15 Effective April 1, 1997, a new corporate financial management system (CFMS) was implemented for government. This system was to provide the accounting information which was lacking. However, the reporting capabilities of this system were not fully operational as of November 1997, so the information was still not available.

3.16 At the time of this follow-up review, the CFMS was also gathering data on exemptions permitted, but staff of the Procurement Branch had been unable to produce reports on this. They were working with others in government in order to obtain this information. It was anticipated that the required accounting and exemption information would be obtained by the end of the 1997-98 fiscal year and would be reported for that year to the Priorities and Planning Committee. No decisions had been made as to whether this information would be reported to the House of Assembly. Staff indicated that they will report to whomever government deems appropriate. Chapter 12 on page 126 of this Report provides more information on the CFMS and its implementation.

3.17 *Outcome measures* - At the time of our 1997 review, the Procurement Branch had developed a first draft of the outcome measures against which success in achieving its objectives will be measured. Staff expected the list of measures to be finalized by the end of the 1997-98 fiscal year with tracking systems to be in place for each measure.

3.18 *Vendor complaints* - During last year's review, in all instances examined, follow-up action on vendor complaints was appropriate and timely. We did however recommend creation of a formal tracking and reporting process to support improvements in accountability and the overall control framework of procurement activities.

3.19 As at November 1997, a draft policy addressing this issue had been developed with the intention of implementing it in 1998-99. There have also been improvements in the flow of information to management of the Branch in relation to the number, type and action taken on complaints received.

3.20 *Procurement of services* - Responsibility for the procurement of services has largely been delegated to departments. Some opportunities for improvement in controls were identified last year. The implementation of CFMS along with the completion of other actions identified by the Procurement Branch should address the opportunities identified. It was indicated that these actions will be completed in 1997-98.

3.21 *CBS guidelines* - Last year the Procurement Branch undertook an internal review of the CBS process to identify any weaknesses and recommend changes to the guidelines to improve the efficiency and effectiveness of the process. We agreed with the recommendations covered in the report resulting from the internal review and identified additional concerns for management consideration.

3.22 In October 1997, the Branch released revised CBS guidelines which address all the areas of improvement identified by the Branch and our Office. These new guidelines should improve the opportunity for obtaining fair value through CBS projects.

3.23 *Additional comments and observations* - The Procurement Branch has undertaken an important initiative this year towards ensuring compliance with the *Government Procurement Policy* throughout government.

3.24 The Policy notes that all procurement activities will be subject to audit by the Auditor General and departmental internal auditors. Compliance with the *Government Procurement Policy* is not always included in the scope of our assignments due to other priorities. However, it is important that an appropriate and active audit function be in place to ensure compliance across government.

3.25 The Procurement Branch recognized this need and contacted the internal audit group at the Department of Finance. With input from the Branch, an audit program has been developed through a Provincial internal audit committee. It is hoped internal audit staff throughout government will use this program, as a guide, to review procurement transactions in the departments for which they are responsible. We support the initiative of the Branch to ensure government is complying with the *Government Procurement Policy*.

Public-Private Partnering

3.26 *Overview* - Many definitions have been put forward for public-private partnering (P3). The following are three representative definitions.

"A cooperative venture between the public and private sectors, built on expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards." (Canadian Council for Public-Private Partnerships)

"A public-private partnership (P3) is any situation where the costs, risks and rewards for infrastructure development, or the provision of services are shared by the government and the private sector." (Slide presentation by Nova Scotia government representatives)

"A public-private partnership (PPP) is simply the ongoing participation of an entity, other than the municipality, in providing public infrastructure or services. PPPs share the risks and rewards between government and those who are willing and able to shoulder the burden." (Public-Private Partnering in the Nova Scotia Municipal Context)

3.27 Whatever definition is used, the key element of a P3 is the sharing of risks and rewards by government and the private sector.

3.28 Government activity in P3 has increased significantly over the past few years and government intends to expand partnering activities. In the 1996-97 *Budget Address*, the Department of Transportation and Public Works was identified as having lead responsibility for creating new P3 arrangements in the Province. In July 1996 ED&T was assigned responsibility for coordinating P3 in government. The goal in using P3 is to provide government services and infrastructure more quickly, efficiently and/or more cost-effectively, while encouraging sustainable economic growth.

3.29 *Prior year's observations* - In last year's review, we found there were no formal policies or guidelines established with respect to P3 in order for government to maximize benefits and avoid or minimize potential risks involved in these arrangements. Although the circumstances surrounding each P3 may be unique, overall policies and guidelines to be applied to all P3s are required to ensure these arrangements are properly managed.

3.30 We found there was no up-to-date inventory of P3 projects 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 including the progress and results of the arrangements.

3.31 Both of these concerns were to be addressed through the establishment of a Public-Private Partnering Task Force to champion and guide P3 in the Province. The Task Force was to be in existence for approximately two years. Approval to establish this Task Force was obtained from Executive Council in July 1996 but at the time of our 1996 audit, it had not been established.

3.32 *Actions taken or planned by ED&T* - A new division called "Public and Private Partnerships" was established within ED&T in 1997-98. The division, according to the *Estimates*, "*Provides leadership and coordination for public-private partnership initiatives across government. Works with other departments and the private sector to develop and enhance expertise in public-private partnering.*" This division was to fulfill the responsibilities originally approved for the Public-Private Partnering Task Force.

3.33 An Executive Director for the division was appointed in July 1997. At the time of our review there was a co-op student working within the division but no other staff had been identified. After the Executive Director's appointment a number of actions were initiated by the division including:

- A P3 interdepartmental committee with representatives from most departments was established. Its first meeting was in November 1997. The purpose of this committee is to serve as a networking mechanism and source of information on P3 for departments. Through this committee all departments are to be made aware of projects being done and studies being undertaken throughout government.
- A library of information on P3 was initiated so any individual throughout government wanting a question answered or research completed on P3 could contact the P3 division of ED&T.
- An inventory of P3 projects which have been undertaken in the last few years was started. The inventory consists of a list of project names along with an indication of the stage of the project. No decision had been made as to information to be collected on each project.

- A draft document was prepared to serve as a guideline for the process to follow when using P3. It is called *Public-Private Partnership Process*. This document describes the stages to follow from scoping the project to contract monitoring. It identifies key aspects to consider such as the need for a request for qualifications prior to a request for proposals, the content and evaluation of each, and the importance of monitoring the project. There are other guidelines which need to be developed to expand on this one such as the criteria to use in determining projects to be considered for P3 and the need for and content of a post-implementation review. At the time of our review, the division had not made any decisions as to policies and guidelines required to properly manage P3.

3.34 At the time of our 1997 review, it had been almost a year and a half since the proposal on managing P3 in government was approved. As a result, staff of the division were planning to complete a review, with input from other departments, on the P3 process to date and to recommend a new proposal on how best to manage P3 within government.

3.35 *Actions taken or planned by others* - The Department of Finance issued a discussion paper in November 1997 on *Transferring Risk in Public/Private Partnerships*. The P3 division of ED&T was not involved in this initiative because it was undertaken prior to the appointment of an Executive Director to that division. As noted in the executive summary of that discussion paper "*This paper identifies some of the risks found in typical capital projects. It also explores some of the criteria to be used in judging the transfer of such risks. Finally it offers some examples of risk transfer projects and outlines some of the related accounting issues that will arise.*" It centres around the challenges faced by government in implementing P3 to create high tech schools but can be used, to some extent, for other P3 projects.

3.36 In response to a request from the Premier in the fall of 1997, the Priorities and Planning Secretariat and other agencies of government conducted a review of the P3 process followed to date for school construction in the Province. In December 1997, the Priorities and Planning Secretariat released a report on that review including recommended guidelines to improve the process for future school construction and to some extent other P3 projects. We performed an audit of school construction initiated to date through P3. See Chapter 8, page 78 for the results of that audit.

3.37 The recommendations in the Priorities and Planning report include the requirement to:

"Assign a coordinator with responsibility for coordination of all public-private partnership projects to ensure consistent management. This senior official should report to the Deputy Minister of Transportation and Public Works and be supported by the appropriate expertise from departments such as Justice, Finance, Transportation and Public Works and such other departments or persons as may be required and designated by the Deputy Minister of Priorities and Planning Secretariat. The coordinator should, as a standard practice, seek private sector legal, business and accounting expertise in respect of each project. Lead departments should be major participants in the project team structured for each project. The coordinator should structure a project team for each project, the makeup of which should be dictated by the type of project, i.e. school, correctional facility, highway." (Page 7)

3.38 This recommendation shifts responsibility for coordinating P3 in government from ED&T to the Department of Transportation and Public Works.

CONCLUDING REMARKS

3.39 The Procurement Branch has demonstrated a commitment to ensuring fair and open procurement practices in government. Significant improvements in controls over the procurement function have been made in the last few years and improvements continue to be an ongoing process.

3.40 With government activity in public-private partnering increasing in the past few years and the intention to continue to use this process, it is important that an overall accountability and control framework including formal policies and guidelines be established to maximize the potential benefits and minimize the potential risks of public-private partnering. Some progress has been made in addressing these concerns over the past year. However, further work is required and should be done 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*

*Exhibit 3.2***POLICIES AND GUIDELINES FOR PROCUREMENT**

<u>Document</u>	<u>Status</u>	<u>Date Released or Estimated Release</u>
Government Procurement Policy	Available	January 1996
Environmentally Responsible Procurement Policy	Available	December 1996
Various Brochures Concerning doing Business with Government	Available	December 1996
Procurement Process (Government)	Available	January 1997
Procurement Process (ASH Sector)	Available	January 1997
Procurement and the Nova Scotia Economy	Available	January 1997
RFP Preparation Guide	Available	January 1997
RFP Evaluation Guide	Available	January 1997
RFP Proponents Guide	Available	January 1997
Guide to Vehicle Rentals	Available	January 1997
Unsolicited Proposals Guide	Available	July 1997
Revised/Improved Cooperative Business Solutions	Available	October 1997
Procurement Manual Policies and Procedures	Available	December 1997
Construction Contract Guidelines	Draft	December 1997
Facilities Procurement Guide	Draft	January 1998
Supplier Complaint and Dispute Settlement Process	Draft	January 1998
Engineering/Architect Procurement Process	Draft	March 1998