



At a Glance



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4 Government-wide: Procurement and Management of Professional Services Contracts

Summary

Overall, the departments we audited followed procurement requirements related to issuing public tenders and obtaining quotes; however, improvements are needed to ensure proper approvals. We found significant weaknesses in monitoring procurement to ensure compliance with legislation and policy. We also identified significant weaknesses related to professional services contracts, including important clauses missing from many contracts which increase the province's risk should disagreements arise. Once signed, we found professional services contracts were monitored to ensure services were received.

Overall, the six departments examined (Health and Wellness, Transportation and Infrastructure Renewal, Economic and Rural Development and Tourism, Internal Services, Natural Resources, and Energy) complied with many aspects of provincial legislation, policy, and guidelines and procured professional services in a manner which considered economy and efficiency. However, 10% of our sample items lacked proper approval to enter into a contract. This is a significant control which needs attention.

We found Procurement Services carries out limited monitoring to ensure compliance with the Public Procurement Act and government's Sustainable Procurement Policy. Additionally, Procurement Services has not taken appropriate action to address instances of noncompliance.

We found contracts were monitored to ensure services were received, and payments made, in accordance with contract terms. However, we identified issues with contracts signed after the work start date and ten percent of the professional services we tested had no contracts. We also found project-specific contracts are not signed with standing offer service providers. This means both parties may not fully understand each other's expectations which increases the risk of disputes. Most of the contracts we examined were missing two key contract terms: a dispute resolution clause and a payment penalty clause. We recommended standard contract terms be established for large and small projects, along with guidance for when each should be used.

For the second time in the past year (see Chapter three of our May 2014 Report on Communications Nova Scotia), we identified potential noncompliance with Canada Revenue Agency rules related to employees versus independent contractors. We recommended that Procurement Services assess the risk of this issue across government and determine if further work is needed to identify whether government may have possible liabilities related to this.

4 Government-wide: Procurement and Management of Professional Services Contracts

Background

4.1 Professional services represent a significant annual expense for the province, totaling \$255 million in 2013-14.

Province of Nova Scotia – Professional Services Expenses (fiscal year ended March 31, 2014 – \$ millions)	
Health and Wellness	\$45
Transportation and Infrastructure Renewal	16
Economic and Rural Development and Tourism	5
Internal Services (Note 2)	4
Natural Resources	3
Energy	1
Other government departments (Note 1)	181
Total	\$255

Note 1 Includes \$110.5 million policing contract which was not part of our audit.

Note 2 Information, Communications and Technology Services (formerly Chief Information Office)

4.2 Previous audits by our Office (Bluenose II Restoration Project – 2015 and Colchester Hospital Replacement – 2011) noted significant weaknesses in procurement, contract terms and contract management. We decided to examine smaller projects to see if there were similar issues.

4.3 Procurement of contracted professional services by the Nova Scotia public sector is subject to the Public Procurement Act. The purpose of the Act includes to:

- *“Provide for the procurement of services by public sector entities in a fair, open, consistent and transparent manner resulting in best value;*
- *Encourage competition, innovative ideas and solutions while respecting trade agreement obligations; and*
- *Promote sustainable procurement in procurement decisions including identifying and exploring opportunities to work with and support social enterprises and businesses that are owned by and who employ under-represented populations.”*



- 4.4 Procurement Services, a branch of the Department of Internal Services, is responsible for the Act. There are a number of policies and other supporting processes to achieve compliance with the Act, including the Sustainable Procurement Policy. This policy must be followed by all government departments, offices, agencies, boards or commissions that are subject to the Auditor General Act or any other public sector entity for whom compliance with the policy has been directed by the responsible Minister.
- 4.5 Professional services include varied items, such as contracts for engineering, marketing, advertising, consulting, and project management. Individual professional services contract engagements are managed by staff in each department.
- 4.6 In 2012, Treasury Board hired a consultant to analyze department expenses for fiscal 2012 to identify potential cost efficiencies in public sector procurement, including professional services. As a result, in September 2013, the province entered into a contract with an external vendor to manage IT temporary contract workers, the largest area of potential savings identified. There has been no analysis of savings resulting from the contract to date. Information available does not provide a break down by type of service which is needed to quantify cost savings. The province has purchased software which should provide more detailed information. This software was not part of the scope of this audit.
- 4.7 Other potential savings in professional services from the consultant's analysis focused on legal and consulting services. These areas have not yet been addressed. Consultants have been hired to further assess these opportunities and develop an implementation plan, if appropriate.

Audit Objectives and Scope

- 4.8 In winter 2015, we completed a performance audit of professional services at six selected departments.
 - Economic and Rural Development and Tourism
 - Energy
 - Health and Wellness
 - Internal Services
 - Natural Resources
 - Transportation and Infrastructure Renewal



- 4.9 The purpose of the audit was to determine whether government effectively procures and manages professional services to achieve value-for-money in its purchases.
- 4.10 The audit was conducted in accordance with sections 18 and 21 of the Auditor General Act and standards of CPA Canada.
- 4.11 The objectives of the audit were to determine:
- whether selected departments procure professional services with due regard for economy and efficiency;
 - how the province assesses the effectiveness of the procurement process in meeting its objectives;
 - if contract terms are established so that value-for-money is received; and
 - whether selected departments are monitoring contracts to help ensure services are received, and payments are made, in accordance with contract terms.
- 4.12 Criteria for this engagement were developed by our Office and were discussed with, and accepted as appropriate by, senior management at the Department of Internal Services. The departments and sample items were selected based on the professional services expenses recorded in the province's consolidated financial statements for the fiscal year-ended March 31, 2014.
- 4.13 The audit approach included reviewing the Public Procurement Act, along with relevant policies, guidelines, and processes; interviewing management and staff at the Procurement Services division of the Department of Internal Services and selected departments; examining contract terms and contract management processes; testing compliance with the Public Procurement Act, policies, guidelines and processes; and testing compliance with contract terms.
- 4.14 Policing services, a significant professional services contract, was excluded from the audit. This is a large and unique contract. This audit was intended to examine smaller professional services contracts.



Significant Audit Observations

Procurement

Conclusions and summary of observations

Overall, the six government departments we audited followed many aspects of relevant procurement legislation, policies, guidelines and process requirements to ensure economy and efficiency were considered in purchasing professional services. However, we identified instances in which procurements were not approved. Approval is a key management control in monitoring expenses. From an overall government perspective, the province does not do a good job of assessing the effectiveness of the procurement process in meeting the objectives of the Public Procurement Act. There is a need to develop, monitor and report on relevant performance measures and targets so that government knows its processes are effective. As well, we found poor monitoring for compliance with the Act and related policy. Procurement Services has not taken appropriate action to address issues of noncompliance with the Act. There is a lack of data available for trend analysis to identify possible cost savings if several departments procure similar services.

4.15 *Background* – Government departments must comply with the sustainable procurement policy. This policy provides for various types of procurement, including:

- Public tender: applies to services of \$10,000 or greater
- Complementary procurement processes:
 - Alternative procurement: uses include to meet technical requirements, only one vendor, or tendering may compromise government confidentiality
 - Standing offers: established by government through a public tender process to create a list of vendors for specific services, applies to procurements of \$100,000 or less

► Expenditures comply with legislation and policies but approvals need attention

4.16 *Testing results* – We examined 31 procurement transactions valued at approximately \$19 million from 2012-13 and 2013-14. Overall, we found the transactions were in compliance with many of the legislative, policy, guideline and process requirements. We found vendor proposals were evaluated by considering a number of criteria, including price, to ensure best value. Evaluation criteria defined in tender documents were followed when evaluating vendor proposals. Alternative procurements were properly



documented and approved. For standing offer procurements in excess of \$25,000, quotes were requested from three vendors.

- 4.17 We examined whether the use of external professional services was appropriate. Overall, we found the use of external professional services was adequately supported for all 31 sample items. In most instances, there were no other options due to technical expertise requirements, project duration, or other factors.
- 4.18 *Posting periods* – Government has two guides which discuss the recommended posting period for public tenders. One guide refers to posting for a minimum of 15 business days, while the other refers to 15 calendar days. We made management aware of this inconsistency and the need to ensure all guidance documents are consistent. They indicated that 15 calendar days is the appropriate time period.
- 4.19 *Approval to purchase* – Three of the 31 procurements we tested were not properly approved. Two missing approvals related to initiating the procurement process; one related to authorizing the vendor selected as discussed below.
- Under a Treasury Board directive, Ministerial approval is required for all spending on services over \$5,000. If actual expenses exceed the amount the Minister approved, additional approval is required. We identified one procurement at the Department of Transportation and Infrastructure Renewal for which actual expenses exceeded the initial approval by approximately \$370,000 but there was no approval for the increase. Department management involved with the purchase were not aware of the requirement.
 - One sample item at Health and Wellness was approved by the Tangible Capital Asset Committee, but not as a professional services procurement. Later, when the Department decided professional services were required, the request for proposal, valued at \$400,000, should have gone to Treasury Board for approval.
 - At Transportation and Infrastructure Renewal, once a vendor is selected, an award letter is completed to authorize the purchase. We found one procurement for \$258,615 in which the award letter was authorized by someone without the proper authority.



Recommendation 4.1

Departments should establish processes to ensure appropriate approvals for expenses are functioning properly. To verify this, Procurement Services (division of the Department of Internal Services) should address appropriate approvals through its procurement monitoring.

Department of Health and Wellness Response: The Department of Health and Wellness (DHW) agrees with this recommendation. To ensure that approvals for expenses are functioning properly, educational sessions will be provided across the DHW on procurement and professional services processes which includes the approval process for expenses. DHW anticipates that the education sessions will be completed by end of this fiscal year (2015-16).

Department of Internal Services Response: Procurement Services agrees with this recommendation. During 2015/16, the Department will establish a new procurement audit function within the Internal Audit Centre. Following its establishment, this team will work with Procurement Services to conduct a risk assessment of procurement processes, develop a risk-based approach to compliance testing and create a schedule that will enable appropriate monitoring to be completed.

Department of Transportation and Infrastructure Renewal Response: The Department of Transportation and Infrastructure Renewal agrees with the recommendation. During 2015-16, the department will review its internal signing authority matrix. Senior management will meet to discuss and develop a protocol for staff to follow.

- 4.20 We also noted that some of the Ministerial approval forms used at the Department of Natural Resources and the former Department of Economic and Rural Development and Tourism did not include a date field so it was not possible to determine if the Minister approved an item before the services were procured.
- 4.21 At Transportation and Infrastructure Renewal, an award letter is created to authorize standing offer purchases. The letter identifies the approved purchase amount but it is not provided to staff creating the purchase order. Instead, staff base purchase orders on invoices received. Those invoices could exceed the maximum approval and staff would not know. Controls would be improved if purchase orders were created based on award letters.
- 4.22 *Threshold for Ministerial approval* – Ministerial approval is required for all procurements in excess of \$5,000. This approval threshold is relatively



low compared to departmental budgets and tendering limits. Procurement Services may wish to consider whether increasing this threshold would improve the efficiency of the procurement process while still respecting the need for higher-level approvals for more significant transactions.

- 4.23 *Trend analysis* – We found there is no regular review and analysis of professional services expenses on a government-wide level to identify trends in the types of services procured, why the services were needed, or costs in relation to other strategies, such as hiring employees. This type of analysis may help to identify cost savings. For example, if departments often hire project managers, it might be cheaper for government to have employees with project management expertise on staff. Alternatively, several departments may wish to tender common expertise requirements together. Larger procurements tend to offer more opportunities for cost savings. At the time of our audit, government did not have sufficient information available from its IT systems to complete trend analysis.

Recommendation 4.2

Procurement Services (division of the Department of Internal Services) should obtain detailed information on the types of professional services procured and use that information to identify possible cost savings.

Department of Internal Services Response: Procurement Services agrees with this recommendation. During 2015/16, Procurement Services will work towards the implementation of a spend analytics tool that will help track categories of spend and identify opportunities for possible cost savings.

► Internal Services not adequately monitoring procurement, lack of action on noncompliance

- 4.24 *Compliance testing* – Compliance testing is the process of checking a sample of transactions to determine if they follow policy or other requirements. If implemented effectively, compliance testing can be a valuable tool to provide information on possible improvements to ensure policy and legislation are followed. It can also help ensure that procurement processes adequately consider economy and efficiency.
- 4.25 Since the late 1990s, public sector entities that use SAP's procurement module (government's financial reporting system) are subject to testing for compliance with the procurement policy. Although Procurement Services has a manual which details procurement policy compliance testing, we found the testing is not completed as required. Additionally, testing is not completed and reported in a timely manner.

- 4.26 Procurement Services had a compliance officer to carry out testing. This position has been vacant since September 2014. Other staff is now responsible to test alternative procurement and noncompliant transactions over \$10,000 but this does not cover required testing below \$10,000. As well, as of September 2014, testing had only been completed to June 2013. Departments receive an annual report detailing the results of compliance testing. However, the 2012-13 report was not sent until May 2014 – 14 months after year-end – and the results of compliance testing for the first quarter of 2013-14 were not reported.
- 4.27 Procurement Services was not able to provide us with a complete list of the public sector entities using SAP’s procurement module. In light of this, its compliance testing may not cover all entities which are required to follow the Sustainable Procurement Policy. As well, testing does not cover the following key procedures to ensure policy requirements are met.
- Ensuring quotes were obtained for procurements under \$10,000
 - Verifying that purchases were not split to avoid obtaining quotes or public tenders
 - Ensuring that applicable transactions were not processed through accounts payable without a purchase order
- 4.28 The Public Procurement Act was phased in over a year, from June 2011 to June 2012. The Act establishes a Chief Procurement Officer with the authority to enforce compliance. It applies to 238 public sector entities, including municipalities, universities, health authorities and school boards. Some of the entities are also subject to compliance testing related to the government procurement policy.
- 4.29 In order to determine if entities are complying with the requirements of the Act and thus whether enforcement action may be necessary, Procurement Services began monitoring compliance with the Public Procurement Act in fall 2013. We identified a number of concerns with this monitoring.
- Testing did not begin until 16 months after the Act came into effect.
 - There are no policies and procedures describing testing to be completed, for which entities under the Act, and the frequency.
 - Other than verifying that tender awards were posted for public tenders, only 38 entities were tested for compliance with the Act.
 - Certain key aspects of the Act have not been tested including:
 - whether services were publicly tendered in accordance with applicable trade agreements; and
 - whether value-for-money was considered when evaluating bids received.



- 4.30 If a public sector entity fails to comply with a directive or recommendation, the Chief Procurement Officer may notify the Minister or public sector entity head, and may publish the information on the procurement web portal.
- 4.31 Procurement Services has not taken sufficient action when public sector entities have not complied with the Act. This does not apply to entities which use the government procurement module as Procurement Services is involved with their procurement processes. For other entities, details of the testing completed, results and action taken include the following.
- For 21 of 38 entities tested by Procurement Services, the entity's procurement policy was not posted on its website. Procurement Services did not notify the entities of this issue.
 - For 26 of 38 entities tested by Procurement Services, the entity's procurement policy did not address all aspects of the Act and there was no follow-up with the entity.
 - For the last quarter of 2013-14, Procurement Services notified 13 entities that they did not post their public tender awards as required. There was no follow up to determine if the information was posted later.
 - There was no trend analysis to identify whether the same entities were repeatedly noncompliant or whether some entities had improved.
- 4.32 When the Public Procurement Act came into effect in June 2012, the number of entities which are subject to compliance testing increased significantly. However, there is only one person responsible for this testing. Procurement Services management indicated that there are plans for government's Internal Audit Centre to complete procurement compliance testing but details have not been decided yet. There is no requirement to test all public sector entities. Some entities are smaller and the effects of noncompliance with the Act would have less impact on achieving the Act's goals. Once the shared services initiative is implemented in May 2015, health authorities will have to comply with the government procurement policy. Thirteen other entities, including eight school boards, will have this requirement in 2016-17 when they join the shared services initiative. Procurement Services management told us there have been no decisions regarding any compliance testing to be completed for these entities.
- 4.33 In September 2014, the Minister of Internal Services announced that a procurement internal audit program would be established. Internal Services needs to complete a comprehensive risk assessment of government procurement processes and develop a risk-based approach to compliance testing. This will help to address areas of concern, as well as determine the resources necessary to adequately address the risks identified

Recommendation 4.3

The Department of Internal Services should complete a comprehensive risk assessment of government procurement processes and implement a risk-based approach to compliance testing, follow up deficiencies, and take action when issues are identified.

Department of Internal Services Response: Procurement Services agrees with this recommendation. As noted in the response to Recommendation 1 above, the Department will establish a new procurement audit function within the Internal Audit Centre and will work with Procurement Services to conduct a risk assessment of procurement processes, and to develop a risk-based approach to compliance testing. A part of this assessment will be to determine the appropriate resource load to effectively conduct compliance testing and appropriate follow-up.

4.34 *Measuring effectiveness* – We found the province is not adequately monitoring procurement processes to ensure they are effective in achieving the objectives of the Public Procurement Act. Procurement Services completes an annual report on procurement activities but it does not cover all public sector entities which must comply with the Public Procurement Act. There is one performance target included in the annual report – 90 percent of procurement should be performed through a competitive process. However, this measure does not provide a lot of insight into the effectiveness of procurement processes. Generally speaking, procurements which do not involve a competitive process are allowed under alternative procurement. An example of a measure which could be used is the percentage of noncompliant transactions identified during compliance testing.

Recommendation 4.4

Procurement Services (division of the Department of Internal Services) should establish and report on performance targets related to the effectiveness of its procurement processes.

Department of Internal Services Response: Procurement Services agrees with this recommendation. Over the next 12-24 months, through the establishment of a shared services model for government procurement across multiple sectors, Procurement Services will develop and begin to report on a series of performance measures to monitor the effectiveness of the procurement process.

Contract Management

Conclusions and summary of observations

Overall, the government departments we audited effectively manage professional services to achieve value-for-money once contracts are signed. However, we



did identify weaknesses which should be addressed. For example, some of the professional services we tested did not have contracts. Additionally standing offer procurements do not have signed contracts which detail project-specific terms. We found instances in which contracts were signed after the service start date, or the service start date was before the effective date of the contract. We also found two key contract terms were missing from most of the contracts we examined: a dispute resolution clause and a payment penalty clause. The need for these clauses varies, depending on the size of a project. Standard contract terms are needed for both small and large projects to deal with this issue. Once contracts were signed, we found contract monitoring and control in the selected departments audited was adequate to ensure professional services were received and paid for as contracted. However, there is no requirement to evaluate vendor performance at the end of a contract and we recommended this be established so the results can be considered for future procurements. We also identified a possible liability to the province based on individuals being hired and treated as self-employed contractors when the terms of their arrangements make it difficult to distinguish them from provincial employees. Based on management's comments, these individuals appear to meet many of the requirements to be considered an employee by Canada Revenue Agency. We recommended that the Department of Internal Services seek advice on how to address this situation. Since this is the second time in the past year we have identified a similar issue, we also recommended that the province consider the risk of this situation in other public sector entities.

4.35 *Background* – Processes establishing appropriate contract terms and monitoring the execution of the contracts are necessary to ensure economy, efficiency and effectiveness in purchasing arrangements. Signed contracts help to protect both parties, and good contracts serve to establish roles and responsibilities in writing. Once contracts are signed, contract monitoring is necessary to ensure services defined in the contracts are received and payments are made in accordance with contract terms.

► Overall, government departments are effectively monitoring professional services contracts

4.36 *Contract monitoring* – We tested professional services contracts to determine whether they were appropriately monitored and managed. We found no systemic or significant issues with monitoring of 31 professional services engagements at the six departments selected. We examined compliance with procurement guidelines in relation to contract management, and general monitoring and control activities to ensure services defined in the contract were received. This included: documented status reporting; ongoing communication between the parties; review and achievement of milestones; and providing deliverables, such as reports. In 14 engagements with contract amendments, we found the amendments were adequately supported, approved and consistent with the initial procurement requirements.



- 4.37 As discussed later, three of the professional services engagements we tested did not have contracts. We examined related documents and used professional judgment in evaluating the reasonableness of management monitoring and control activities for these engagements.
- 4.38 We also tested 62 invoices related to the 31 professional services engagements. We checked whether the invoices contained sufficient detail to enable review and approval; and whether payments were properly authorized and made in compliance with contract terms. We found three projects for which payments were issued prior to receipt of services.
- Department of Natural Resources: Two invoices (\$15,708, \$4,560) were processed to be included in fiscal year end March 31, 2014, even though the services were not yet received. While these were not significant from a dollar perspective, payments should only be issued for services received.
 - Department of Economic and Rural Development and Tourism: One invoice for \$15,130 and a portion of another invoice which totalled \$24,917 were paid but the services were not provided.

► Departments are not evaluating vendor performance

- 4.39 *Lack of vendor evaluations* – There is no requirement to evaluate vendor performance after contract completion, with the exception of IT service contracts valued at less than \$100,000. Since September 2013, these IT service contracts have been managed by a third party management company. This includes an evaluation process. We tested 20 completed contracts and found two at the Department of Internal Services (Information, Communications and Technology Services division) had vendor evaluations; one was required as it was for IT services valued at less than \$100,000. The remaining 18 were not evaluated.
- 4.40 Vendor evaluations can assist with future procurements. For example, if the information is available centrally, it can be used in assessing vendor proposals to reduce the risk of departments contracting with vendors who have previously failed to deliver quality service.

Recommendation 4.5

Procurement Services (division of Department of Internal Services) should require vendor evaluations be completed at the end of contracts and this information should be available as a resource for future procurement decisions.

Department of Internal Services Response: Procurement Services agrees with this recommendation. Procurement Services will introduce detailed language in a new Procurement Policy that evaluates supplier performance, and introduces interim and final performance evaluations. This policy is expected to be introduced during 2015/16.



► Some departments did not have signed contracts.

4.41 *Engagement contracts* – A contract is a legal document which helps to establish the expectations of both parties and reduce the risk of disputes arising during the engagement. We tested 31 professional services engagements across six government departments to ensure the contracts included adequate terms to protect the public interest. There were no contracts with the service provider in three instances (one at each of Health and Wellness, Transportation and Infrastructure Renewal, and the former Economic and Rural Development and Tourism). There were other related documents such as a statement of work, or vendor proposal which could be referenced to a contract, but in these cases there was no legal document signed by both parties, including key terms to protect the public interest such as a termination clause and dispute resolution clause. This increases the risk of costly disputes arising during the engagement.

4.42 Professional services can be purchased from government standing offers, provided the procurement is under \$100,000. In order to be added to the standing offer list, vendors are required to sign a contract with government which includes types of services they will provide, individual contractor names and their qualifications, and rates for each individual. When a department requires services from the standing offer, it prepares a statement of work, describing the project-specific services required. Vendors generally provide proposals detailing how they can satisfy the service requirements. When a vendor is selected, there is no project-specific contract signed which clearly outlines what is required and how the vendor will meet the requirement.

4.43 We tested 22 professional services contracts in our 31 sample items. Three sample items did not have contracts. Prior to our audit, Department management realized one of these contracts was missing and a contract was signed at that time. This excludes the seven standing offer contracts with vendors which we tested. We found the following.

- Eight instances in which the vendor signed the contract after the start date.

Department	# of Contracts	Dollars	Days Late
Health and Wellness	2	\$231,000 \$39,000	28 days 23 days
Natural Resources	1	26,000	5 days
Transportation and Infrastructure Renewal	2	\$2,200,000 \$669,965	4 days 1 day
Economic and Rural Development and Tourism	1	\$772,500	4 days
Internal Services	1	\$400,000	3 days
Energy	1	\$85,565	2 days
Total	8		



- Five instances in which the vendor did not date the contract. We cannot conclude whether the vendor signed the contract before the service start date (two contracts at Energy; and one at each of Health and Wellness; Internal Services and Natural Resources). The value of the contracts ranged from \$44,310 to \$154,000.
- Three instances in which the service start date was before the effective date of the contract, ranging from five to 16 days (two – Natural Resources; one – Health and Wellness). The value of the contracts ranged from \$26,000 to \$231,000.

4.44 These situations place unnecessary risk on the province should a dispute arise regarding work carried out before a contract is signed or is effective.

Recommendation 4.6

Procurement Services (division of Department of Internal Services) should establish processes, such as educating departments, to reduce the risk that professional services contracts are signed and dated prior to the service start date and test to verify compliance.

Department of Internal Services Response: Procurement Services agrees with this recommendation. During 2015/16, Procurement Services will work towards the implementation of a contract management tool, and will continue to reinforce the importance of proper contract signing and project engagement through outreach with our clients.

Recommendation 4.7

Procurement Services (division of Department of Internal Services) should require government departments to sign project-specific contracts with standing offer service providers.

Department of Internal Services Response: Procurement Services agrees with this recommendation. Procurement Services has started project-specific contract signing with standing offer service providers for IT-related consulting. During 2015/16, we will expand this practice to other types of services such as our management business consulting standing offer.



Government enters contracts without dispute resolution and payment penalty clauses

4.45 *Contract terms* – Appropriate contract terms help ensure that government is obtaining value-for-money. Procurement Services provides standard contract templates for various types of professional services procurements. These templates may be used for all contracts, regardless of the size. Departments are not required to use the templates but must have legal services review



contracts before signing if the templates are not followed. Twenty-four of the 29 contracts we examined used a standard template.

- 4.46 We found the contracts we examined included clauses which protect the public interest. For example, contracts clearly defined responsibilities of all parties, contained clear payment terms, required completion dates, and included a cancellation or termination clause. We also noted contract terms are consistent with request for proposal submissions or standing offer details. However, we noted two deficiencies in the standard contract templates: lack of a dispute resolution clause and lack of a payment penalty clause for nonperformance.
- 4.47 A dispute resolution clause helps to manage disagreements with service providers and associated costs. As well, a payment penalty clause should be included in the event contract provisions are not met. Without this clause, there is limited incentive for the vendor to comply with the contract terms, including completion dates. The risks involved with not having these two clauses depend on the size of the project. Our audit of the Bluenose II restoration project (reported in January 2015) demonstrates the possible consequences of not having a payment penalty clause in larger contracts.
- 4.48 Standard contract terms may differ between larger and smaller projects. Certain clauses may not be necessary for smaller engagements.
- 4.49 *Testing results* – We tested 29 contracts and found the following.
- The contract template for standing offer services did not include a dispute resolution or payment penalty clause, as discussed above.
 - The contract template for request for proposals and alternative procurements did not have a dispute resolution clause until November 2013. The template does not have a penalty payment clause.
 - We tested five contracts which did not use a standard contract template. None of the contracts had a penalty payment clause. One had a dispute resolution clause (Internal Services) and four did not (2 – Energy, 2 – Transportation and Infrastructure Renewal).

Recommendation 4.8

Procurement Services (division of Department of Internal Services) should implement standard contract terms covering key clauses for larger and smaller projects. The Division should also guide departments in selecting the appropriate template.

Department of Internal Services Response: Procurement Services agrees with this recommendation. Over the next 12-24 months, Procurement Services will work with Legal Services to develop a clause library, including criteria for use.



Additionally, Procurement Services will introduce detailed language in the new Procurement Policy that will guide the appropriate procurement format selection. This policy is expected to be introduced during 2015/16.

► Government needs to assess risks of possible employee-employer relationships with contractors.

4.50 When contracting for professional services, there is a risk to the province if the relationship is similar to an employee versus that of an independent contractor. Canada Revenue Agency provides a list of indicators to help assess whether an individual is an employee or self-employed as a contractor. One of the key indicators is the level of control in the relationship. The more control the employer has over the day-to-day work completed, the more likely the relationship is employee-employer. In these situations, the province is responsible for remitting deductions it should withhold from the employee for Canada pension plan contributions and employment insurance premiums, as well as its own matching amounts, along with any interest or fines accruing if these amounts are not remitted.

4.51 As part of our audit, we asked management of the departments audited whether they had professional services contracts with sole proprietors for greater than six months in which the contractor completed day-to-day work similar to employees. Management at the Department of Transportation and Infrastructure Renewal, including a division which is now part of Internal Services, provided a list of nine contracts which met this criteria. We reviewed one contract which met many of the requirements to be considered an employee-employer relationship but no deductions were withheld or remitted by the province. Management told us there were two additional contracts related to the same project with similar situations. These contractors were hired between 2001 and 2010. One became a Department employee in 2013. The remaining two are still under contract with plans for them to become employees during 2015-16. Management indicated the amount paid to these contractors between January 1, 2008 and December 31, 2014 was approximately \$2 million. If the Canada Revenue Agency considers these individuals employees, the province is liable for Canada pension plan and employment insurance deductions it should have withheld from these contractors, as well as the employer's matching amounts and interest or fines accruing.

4.52 This is the second time in the past year that we have identified an issue with contractors who may be considered employees. In chapter three of our May 2014 Report on Communications Nova Scotia, we found some contractors met many of the requirements to be considered an employee-employer relationship by Canada Revenue Agency.



Recommendation 4.9

The Department of Internal Services should determine whether certain contractors may be considered employees by Canada Revenue Agency and obtain legal advice. Additionally, Procurement Services should work with the Public Service Commission, Finance, Treasury Board, and Justice to review the risk of employee-employer relationships across government and take action if needed.

Department of Internal Services Response: The Department of Internal Services will seek advice on whether certain contractors may be considered employees by Canada Revenue Agency. The Department of Internal Services will initiate discussions with the Public Service Commission, Finance and Treasury Board and, if required, Legal Services to explore the risk of employee-employer relationships in an effort to limit any potential liability to the Province. Procurement Services will continue to provide guidance to client departments to better assess the identification of potential employee-employer relationships.