

Various Departments — Contracting

Introduction

On April 7, 2014 we were asked by an MLA to investigate the circumstances surrounding contracts the Government of Alberta awarded to 1689986 Alberta Ltd. (operating as Navigator Ltd.) for communications services. We indicated that we would examine these contracts to assess whether the departments' contracting policies have been followed.

Audit objectives and scope

The objective of our audits was to determine whether the departments of Executive Council, Health and Municipal Affairs followed their contract policies and whether their decisions to sole source contracts with Navigator Ltd. were adequately supported.

We noted during our work that the three departments all have different contracting policies for procuring services. We intend to follow up with the government to explore why departments are using different contracting policies for procuring services.

We examined four contracts entered into between the Department of Health and Navigator Ltd. in the 2012 and 2013 fiscal years. We also reviewed the supporting documentation and interviewed individuals that either were currently at the department or previously had been at the department and were involved with these contracts. We substantially completed our audit at the Department of Health on August 27, 2014.

We also examined two contracts related to work on the southern Alberta flood—one contract between the Department of Municipal Affairs and Navigator Ltd., and another between the Department of Executive Council and Navigator Ltd. We reviewed the departments' supporting documentation and interviewed individuals from the departments who were involved in the awarding and administration of these contracts. We substantially completed our audit at the departments on September 12, 2014.

As our audits were focused on the departments' compliance with their contracting policies when awarding and managing these contracts, we relied on the departments' supporting documentation and information obtained through interviewing management and staff of the respective departments. We found no evidence that Navigator Ltd. had any role in how these contracts were awarded or managed by the departments.

Our audit work was conducted in accordance with the *Auditor General Act* and the standards for assurance engagements set by the Chartered Professional Accountants of Canada.

FINDINGS AND RECOMMENDATIONS

Department of Health

Background

Subject to certain exceptions, the department's contract policy¹ requires contracts for services \$75,000 or greater, or contracts for goods \$10,000 or greater, to be awarded on a competitive bid basis. The department may permit contracts to be sole sourced if in accordance with the requirements of the

¹ Alberta Health and Wellness Contract Policy, revised November 2011, Section 2.5.

Agreement on Internal Trade (AIT), Trade, Investment and Labour Mobility Agreement (TILMA), New West Partnership Trade Agreement (NWPTA) and Agreement on Government Procurement (GPA).

The department's policy also requires contracts to be awarded based on a competitive process for procurement of services less than \$75,000, "unless circumstances warrant a sole source contract."

When sole sourcing, the policy requires staff to evaluate this decision on a case by case basis and to document the reasons. The policy also indicates that "contracts should not be prepared, designed or structured to avoid the department contract policy or" the department's "obligations under NWPTA, TILMA, AIT and GPA, for example by:

- issuing a series of contracts that relate to the same project and awarded to the same contractor;
- issuing a series of amendments that result in the total contract amount being \$75,000 or greater; and
- understating contract amounts and then amending the contract in the future."

Contract policy

RECOMMENDATION 9: IMPROVE CONTRACT POLICY AND DEMONSTRATE COMPLIANCE

We recommend that the Department of Health:

- upgrade its contract policy to ensure its branches consider and document whether or not a project is a phase of an overall project requiring a competitive bid
- ensure the contract policy describes the information that should be documented to support sole sourcing
- improve its processes to demonstrate it complies with its contract policy

Criteria: the standards for our audit

The department should have processes that demonstrate it complies with its contract policy.

The department should provide sufficient rationale in its request to contract form or in the contract file to support sole sourcing decisions.

Our audit findings

KEY FINDINGS

- The department did not consistently follow its policy when entering into these contracts.
- The department did not clearly document why sole sourcing was appropriate and in compliance with its policy.

The department entered into the following contracts with Navigator Ltd. in the 2012 and 2013 fiscal years.

Date and Term of Contract	Description of Contract ²	Contracted Amount	Invoiced Amount
November 28, 2011 to December 30, 2011	Services include stakeholder consultation through focus groups (12 groups in 4 communities) and qualitative research related to stakeholder perception of Alberta's healthcare system in its current state and the preferred future state of the healthcare system.	\$74,400	\$74,400
December 19, 2011 to January 31, 2012	Services include a communications strategy (based on the stakeholder consultation and qualitative research), a detailed environmental scan of media coverage and also the identification of strategic objectives and key considerations for the duration of the communication plan.	\$40,000	\$40,000
March 5, 2012 to May 31, 2012 (contract was terminated effective March 31, 2012)	Services include the development of a strategic communications plan, and providing advice, key messages, and speaking notes with respect to ongoing negotiations with the Alberta Medical Association regarding physician compensation, as well as physician issues related to the public inquiry into queue jumping. Services also include weekly news scan and updates to the strategic communications plan.	\$67,500	\$31,437
June 1, 2012 to September 28, 2012	Services include development of a strategic communications plan, and provision of communication advice, message mapping and media analysis with respect to the key priorities of the department: primary health care, continuing care, mental health and wellness. Includes weekly news scan and regular updates to the strategic communications plan.	\$74,000	\$73,600

The first criterion was not met in the following cases:

- a) Sole sourcing of contracts—The department did not indicate on its request to contract forms that it was applying an exception under the trade agreements to having a competitive process as the contracts were each under the trade agreements' thresholds. The department's view is that as work progressed on each contract, further work was defined at that time that led the department to determine the need for additional work. However, that is not described in the contract documentation for the last three contracts. When we consider the timing of the last three contracts, the nature of the services provided, and the dollar amounts involved, the services performed by these contracts could reasonably be viewed as phases of an overall project to obtain communications advice and planning for the issues affecting health care.

² The descriptions are from the department's Request to Contract forms and from the contracts.

The department's Contract Review Committee noted, on the request to contract form for the third contract, that the vendor had received sole sourced contracts in the past. The legal services reviewer noted on the contract summary routing form for the fourth contract, that "if there are multiple contracts with the same vendor for the same work" there is a "risk of the department being in violation of trade agreements if another vendor was successful in having this characterized as contract splitting." The contract request form noted that a recommendation had been made to go through an RFP process for future requirements.

The department does not have a process that requires individual branches to document on the contract request form whether additional contracts would likely result from the contract being considered.

- b) Date work commenced—The department's contract management unit noted for the first three contracts and the legal services reviewer for the fourth contract, that the contracts were not in compliance with the contract policy because they were signed after the start dates of the contracts. The policy requires that a contract must be signed by both parties prior to starting work under the contract unless there is an emergency situation and approval is obtained from the assistant deputy minister. There was no documentation indicating that the approval was received before work started and that the circumstances constituted an emergency situation.

The department's Contract Review Committee is responsible for providing quality assurance, ensuring that contracts provide value and that risks are mitigated to tolerable levels. A CRC review is required for contracts that are \$50,000 or greater. The contracts can start before the CRC review is done if there is an emergency situation and approval is obtained from the assistant deputy minister. Three of the contracts had contract amounts of greater than \$50,000 and were reviewed by the CRC after the start date of the contract. Having the review after the work starts diminishes the effectiveness of the review.

The second criterion was not met.

The contract policy requires that branches maintain a written record in the contract file of all contracting activities and decisions. This includes the justification to contract. The policy also indicates mandatory documentation but does not specify that the following should be documented to support sole sourcing decisions:

- a) How the contractor was identified and a description of the unique skills that the contractor has—The department told us that direction first came from the minister's office to use Navigator Ltd. as the contractor. Both the department and the minister told us the contractor was selected because of its experience with physician compensation and major health system reform issues in another province. The only documentation consisted of emails from the minister to the contractor. In the first email the minister indicated the department would provide information as to where Navigator Ltd. should send the invoice. In the second email, he indicated that the department might wait to do the second contract pending the completion of the first contract. There was no description on the contract request form or in the contract file for the first contract as to how the contractor was identified including whether or not other contractors were considered and if not why not. None of the request for contract forms identified why the expertise the contractor had was considered to be unique. The department told us that they didn't have experience or resources to perform all of the tasks required in the contracts and also asserted that this was true of the Public Affairs Bureau at the time. However, there was no documentation for any of the contracts indicating the reasons why staff in the department or elsewhere in the government could not perform the services.

- b) How the branches determined the contract fee is a reasonable amount—There was no documentation for the four Navigator Ltd. contracts on how the branches determined that the amount to be paid was reasonable.

As part of our audit we also examined whether the department had evidence to support that work had been done. The department provided some evidence that work had been done. At the conclusion of the contracts, staff are required to complete a contract evaluation form. In all cases the contract evaluation form indicated that the services had been received. The department also provided us with copy of the reports produced for the first, second and fourth contracts. For the third contract, we were advised that the outputs in the form of communications advice, planning and support were provided and would have been reflected in communications products related to the AMA negotiations. The contract was terminated early as a result of the government reaching an agreement in principle for physician compensation with the AMA.

Implications and risks if recommendation not implemented

The department may not be able to demonstrate that it is in compliance with its contract policy and applicable trade agreements or that the fees paid represent reasonable amounts for the services provided.

FINDINGS AND RECOMMENDATIONS

Departments of Executive Council and Municipal Affairs

Background

The Department of Municipal Affairs' contract policy states that the norm for awarding contracts is through a competitive process in which a minimum of three quotes must be sought. Sole sourcing is an alternative that is available when there is appropriate justification. The policy requires sole sourced contracts for services \$5,000 or greater to be supported by a documented rationale. The policy goes on to state that the contracting file should contain all documents—from supporting the original decision to contract through to the final evaluation upon completion.

The Department of Executive Council's contract policy states that competitive tendering is recommended when the cost of the services is over \$25,000. The department's policy states that sole sourcing can be considered for services under \$75,000, if one or more of the following conditions apply:

- the service provider has prior knowledge of the department's business and changing service providers will interrupt continuity and stability of services
- there is an absence of competitors
- the service is required urgently

The policy requires the department to document its rationale for not seeking competitive bids for sole sourced contracts exceeding \$25,000.

Further, both departments must ensure contracts comply with obligations under applicable trade agreements. For example, the AIT, TILMA, NWPTA and GPA contain specific requirements for sole sourcing when the value of a sole sourced contract exceeds a certain threshold. The trade agreements also outline exemptions that are available in place of using a competitive bid process—i.e., when an unforeseeable situation of urgency exists and the services cannot be obtained in time by means of an open procurement process.

After the June 2013 flood in southern Alberta, the government declared a disaster in southern Alberta and a state of emergency in High River. Premier Redford established the Flood Recovery Task Force to lead flood response and recovery efforts. The chief assistant deputy minister responsible for the task force reported to the deputy ministers of Municipal Affairs and Executive Council. The Public Affairs Bureau, a division within Executive Council, provided communications staff to support the task force.

RECOMMENDATION 10: IMPROVE COMPLIANCE WITH CONTRACTING POLICIES

We recommend that the Departments of Municipal Affairs and Executive Council:

- document the rationale for contracting services and selecting vendors when entering into sole sourced contracts
- follow proper contract administration and evaluation processes
- update their contracting policies to deal with situations where one department arranges for a contractor to perform services for another department

Criteria: the standards for our audit

The Departments of Municipal Affairs and Executive Council should comply with their contracting policies.

Our audit findings

KEY FINDINGS

- For the \$240,000 contract, the departments did not adequately document the rationale for contracting the services and selecting the vendor.
- The departments did not have a written contract in place for the \$240,000 contract that detailed the deliverables and the associated costs until three days before the termination date of the contract.
- The departments did not complete contractor evaluations for either contract.

The Government of Alberta entered into the following flood-related contracts with Navigator Ltd.

Department	Term of Contract	Description of Contract	Contracted Amount	Invoiced Amount
Municipal Affairs/ Executive Council	July 18, 2013 to October 31, 2013	Provide strategic communication and related services and advice, as well as communication strategy for the flood mitigation symposium and logistical planning for the event, and communications strategy for the provincial recognition program.	\$240,000 plus expenses up to \$10,000	\$240,000 plus \$7,116 in expenses
Executive Council	August 26, 2013 to September 30, 2013	Conduct focus groups in Alberta on government's response and recovery efforts related to southern Alberta flooding.	\$73,200	\$73,200

\$240,000 contract

Decision to contract—The Department of Municipal Affairs was unable to provide adequate documentation that explained why these services were contracted and why Navigator Ltd. had the qualifications necessary to perform this work. We found no evidence that the department had attempted to contact or determine whether other vendors were adequately qualified to provide the services.

The task force requested continuity of the communications resources that were assigned to the task force. In response to this request, the Office of the Premier's director of communications arranged for Navigator Ltd. to assist the task force. The Office of the Premier engaged Navigator Ltd. but did not prepare a contract or ultimately sign the contract.

Contract administration—The department did not have in place a written contract that established the contract deliverables, a timetable for the deliverables and a price when the work began. We were also unable to find evidence that the department benchmarked the proposed hourly rates in the contract to determine whether they were reasonable. The department signed the contract on October 28, 2013, three days before the termination date of the contract.

We verified with the departments that the contractor delivered a communications road map, flood mitigation communications strategy and work related to the flood symposium. However, the contract, although not executed before work commenced, required the contractor to submit weekly written status reports indicating tasks completed and timelines for completing remaining tasks. The department was unable to provide these reports to us. The department did not complete an evaluation of the contractor's performance as part of its contract closing out processes.

When one group arranges contractors for another group that receives the arrangement, it needs to be clear who is responsible for contract administration. In this case, the Office of the Premier engaged Navigator Ltd. The contractor's staff worked with Public Affairs Bureau staff who were part of the task force. However, neither the task force nor the Public Affairs Bureau were prepared to sign the contract because they had not specifically been involved in engaging Navigator Ltd. In the end, the Department of Municipal Affairs signed the contract.

\$73,200 contract

Decision to contract—The Department of Executive Council told us it sole sourced the \$73,200 contract with Navigator Ltd. because it was already doing flood related work for the task force. However, when we considered the nature, timing and oversight of the work along with the original contract proposals from Navigator Ltd., these two contracts could reasonably be viewed as phases of an overall flood related communication project. The department's decision in August 2013 to sole source and select Navigator Ltd. to conduct focus groups was inconsequential as the decision had already been made in July 2013 to use Navigator Ltd.

Contract administration—The contract required Navigator Ltd. to conduct eight focus groups in four Alberta cities at a cost of \$73,200. In their review of the proposed contract, department staff questioned the cost of the contract as they thought it was high compared to past contracts that had similar methodologies with similar number of locations and focus groups. Although department staff questioned the cost of the contract in the documentation we examined, the cost of the contract was not further negotiated or changed. The department was unable to provide us with documentation to demonstrate how it concluded that the contracted amount was reasonable.

The department did not complete an evaluation of the contractor after the work was completed. It is good practice to conduct post-contract evaluations to consider whether the intended outcomes were achieved, the quality of the services and contractor performance. Evaluations also provide the necessary information so that the next contract manager can decide whether the department should engage the contractor.

Implications and risks if recommendation not implemented

Good contracting policies are designed to ensure the procurement of services is competitive, fair and cost-effective and results in the right services delivered at the right place and at the right time. To not follow policy is to risk substandard performance by not receiving the best value for money.