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AUDITOR GENERAL
MANITOBA

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Department of Conservation
Department of Infrastructure and Transportation
Department of Innovation, Energy and Mines
Department of Justice
Food Development Centre
Manitoba Education, Research and Learning Information Networks
Vehicle and Equipment Management Agency

Web version

Waiving of Competitive Bids

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Main points

What we found

Our objectives were to determine whether departments and special operating agencies (SOAs):

- Ensured fair access to government contracts by waiving competitive bids only when “acceptable circumstances” identified in the government’s Procurement Administration Manual (PAM) were demonstrated.
- Assessed quoted prices on untendered contracts for consistency with fair market value.
- Publicly disclosed untendered contracts over \$1,000.

We examined untendered contracts in 5 departments and 3 SOAs.

We concluded that:

- Fair access to contracts was not always assured. See **section 1**.
- There were significant gaps in public information on untendered contracts over \$1,000. See **section 3**.

Because there was little to no documentation on the information that departments and SOAs used to ensure quoted prices represented fair market value, we could not conclude on whether they ensured fair market value was obtained. See **section 2**.

Acceptable circumstances frequently not demonstrated

Departments—26 of 50 contracts we examined were not supported by an acceptable circumstance needed to justify waiving competitive bids. The justifications for some of these were public policy initiatives or reasonable or practical business practices. Of greatest concern were the 12 contracts awarded to vendors because a department wanted to work with them or because provisions in requests for proposals or existing contracts amounted to promises of future contracts. In these cases, competing vendors may have been unnecessarily denied access to government contracts.

SOAs—8 of 30 contracts we examined did not show an acceptable circumstance to justify waiving competitive bids. For 6 of these contracts, all with one SOA, the Deputy Minister approved a policy that gave the Chief Operating Officer (COO) the authority to “waive bidding requirements where expedient”. This, in effect, allowed the SOA to bypass the PAM’s requirements.

Proper approvals for the awarding of untendered contracts not always obtained

Departments—11 of 50 contracts we examined lacked the required approvals (8 needed Treasury Board approval). Many of these occurred during the 2011 flood and related to one department. To see if the approval of emergency contracts was an issue in another department, we selected a sample of 10 emergency contracts with 19 related amendments in that department.

What is tendering?

Tendering a contract means to seek bids on it. An untendered contract is one that people could not bid on.

The department did not obtain the required Treasury Board approvals for the 10 contracts or for 17 of the 19 amendments.

SOAs—2 COOs had unlimited spending authority, but the approvals by one of them were not documented. One SOA adopted the spending authority limits for untendered contracts in the government's General Manual of Administration (GMA), but it did not get proper approvals for 4 of 10 contracts we examined.

Most contracts not disclosed within one month, many not disclosed at all

Departments and SOAs—during our 18-month audit period, 1,857 of the 2,133 untendered contracts disclosed in the public access database (by the 5 departments and 3 SOAs we examined) were not disclosed within the required one month of contract signing. For contracts not disclosed within one month, the average number of days between contract signing and disclosure ranged from 48 to 182. These long delays mean that for extended periods of time many contracts that should have been disclosed were not. Many other untendered contracts were not disclosed for reasons other than timing. They totaled \$183.2 million.

Public access to untendered contract database severely limited; database hard to use and unreliable

The public can access the untendered contract information only on one computer in the Legislature's Reading Room, and only during business hours. Internet access is not available.

Disclosure threshold unchanged in 17 years

In 1996, the *Financial Administration Act* set the disclosure threshold for untendered contracts at \$1,000. It is still \$1,000, 17 years later. It is unclear if the threshold still reflects the Government's disclosure objective.

Management and administrative practices need to be stronger

Several management and administrative weaknesses caused these performance problems, including:

- fragmented and incomplete file documentation.
- no compliance monitoring.
- only limited communication of the Waiving of Competitive Bids Policy.
- an inefficient and error-prone process to enter information to the public access database.

Why it matters

Government must ensure that Manitoba citizens receive good value for their tax dollars when it acquires goods and services from the private sector. A competitive procurement process helps achieve that. It also ensures vendors get fair access to government business.

When the government does not use a competitive process, it has an obligation to ensure the interests of the public are properly protected. Untendered contracts increase the risk of procurement improprieties. Ensuring compliance with strong policies to mitigate this risk is essential. Untendered contracts issued during the 18-month audit period totalled at least \$274 million.

Background

Who in government has authority to procure (or acquire) goods and services?

The *Government Purchases Act* grants the Procurement Services Branch (PSB), a division of Manitoba Infrastructure and Transportation (MIT), authority to purchase goods for departments. The PSB can delegate this authority to departments, but all purchases of this type are subject to PSB review. No legislative authority covers the purchase of services.

Under the Provincial Comptrollership Framework, departments establish and maintain their own financial management, administration and control systems. This includes procurement systems, including the waiving of competitive bids.

According to the Special Operating Agencies Financing Authority's 2012/13 annual report, "SOAs are government service operations granted more direct responsibility for results and increased management flexibility needed to reach new levels of performance." Each SOA has an operating charter that outlines its governance, including its authority for procurement. At the time of this audit, there were 17 SOAs.

Each department and SOA decides what goods and services it needs and then obtains (or procures) them following provincial policies.

What policies guide procurement?

Under Treasury Board authority, the PSB develops, maintains, and communicates the procurement policies, guidelines and procedures in the Procurement Administration Manual (PAM). This is the Manitoba government's authoritative manual on procurement policies.

The PAM refers to the General Manual of Administration (maintained by Treasury Board Secretariat, it is the authoritative administration manual for government), the Financial Administration Manual (FAM) (maintained by the Provincial Comptroller), and the Agreement on Internal Trade (AIT), which Manitoba has signed.

The AIT provides a framework to reduce and eliminate barriers to the interprovincial movement of goods, services, labour and investment and to bring about more open trade within Canada. Chapter 5 of the AIT requires tendering for all goods over \$25,000 and services over \$100,000 unless specific circumstances are present.

How does the PSB help departments and SOAs with procurement?

When departments want to obtain goods over \$2,500, with a few minor exceptions they are required by the *Government Purchases Act* to contact the PSB unless the goods must be purchased through a specific SOA or central service provider. No legislative authority covers the purchase of services, so departments procure services on their own or seek PSB's help.

PSB purchasing agents help departments to:

- draft tender documents.
- post tender documents to MERX, the electronic tendering site Manitoba uses.

- evaluate bids to decide on the lowest cost bidder that best meets the criteria.
- make purchases if tendering is not possible (for example, single and sole source contracts).
- draft contracts.

SOAs may seek PSB help when procuring goods and services.

What is the waiving of competitive bids and when is it allowed?

The Government Purchases Act requires competitive offers to be obtained using public tenders or similar means, whenever possible. Similar means include requests for quotes from two or more suppliers. Sometimes, using public tenders or similar means is not possible. Purchases in these cases can be untendered. The PAM calls this untendered contracting process the “waiving of competitive bids”.

The *Waiving of Competitive Bids* policy in the PAM was effective January 2011. To justify waiving competitive bids, the PAM requires at least 1 of 4 **acceptable circumstances** be demonstrated. These circumstances are consistent with those in the AIT.

Acceptable circumstances for not tendering:

- Emergency
- Urgent
- Sole source
- Single source

Source: PAM

What value of goods and services is purchased through untendered contracts?

The value of untendered contracts issued during the 18-month audit period was at least \$274 million. **Section 3.1** has our comments on the completeness of the database that accumulates information on untendered contracts for public disclosure.

The term **contract** is defined in the PAM as follows:

A “contract” exists, by law, when there is agreement regarding:

1. an Offer (ex: to sell goods, to perform services...); and
2. an Acceptance (ex: agreement to the offer...we intend to buy the goods, accept the services...); and
3. Consideration (ex: further action is taken by one of the parties...the goods are shipped, an invoice is paid...)

Under the law, a contract is a binding legal agreement that is enforceable in a court of law and the contract may be formed whether a written document exists or not. This includes all means under which a contract may be established:

- a written contract (ex: a written tender issued to a supplier, followed by a written contract, goods or services provided, invoice received and paid accordingly); or
- a verbal contract (ex: pricing obtained by phone, no written agreement exists, the goods or services are provided, invoice received and paid accordingly); or
- an informal contract (ex: pricing obtained by email/fax, instruction provided to the supplier to provide the goods or services verbally or by email/fax, invoice received and payment made accordingly); or
- an implied contract (ex: purchase made by P-Card, goods accepted, no invoice received but payment of the transaction is authorized at point of sale, and payment to the banking institution of the P-Card is also authorized).

What public disclosure of untendered contracts is required?

The PAM and Section 80 of the *Financial Administration Act* (FAA) require the public disclosure of untendered contracts over \$1,000. Amendments to untendered contracts must also be reported, and refer to the original contract.

Public disclosure of untendered contracts is made through a database of untendered contracts accessible from one computer in the Reading Room (Room 260) of the Legislative Building.

Audit approach

Our objectives were to determine whether departments and SOAs:

- Ensured fair access to government contracts by waiving competitive bids only when “acceptable circumstances” identified in the government’s Procurement Administration Manual (PAM) were demonstrated.
- Assessed quoted prices on untendered contracts for consistency with fair market value.
- Publicly disclosed untendered contracts over \$1,000.

We examined untendered contracts in 5 departments and 3 SOAs (see **Figure 1**).

Figure 1: Departments and SOAs in our audit	
Departments	Special Operating Agency
Aboriginal and Northern Affairs (ANA)	Food Development Centre (FDC)
Conservation	Manitoba Education, Research and Learning
Infrastructure and Transportation (MIT)	Information Networks (MERLIN)
Innovation, Energy and Mines (IEM)	Vehicle and Equipment Management Agency
Justice	(VEMA)

We selected 10 untendered contracts for each department and SOA. With respect to the approvals of emergency contracts we selected an additional sample of 10 emergency contracts at MIT.

The audit examined untendered contracts from April 1, 2011 to September 30, 2012. Our work was substantially complete by July 3, 2013. The details of any pertinent events that occurred after September 30, 2012 are in our report.

We did not assess contract management.

Our examination was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants and accordingly, included tests and other procedures as we considered necessary.

Findings and recommendations

We concluded that:

- Fair access to contracts is not always assured. (**section 1**)
- There were significant gaps in public information on untendered contracts over \$1,000. (**section 3**)

We could not conclude whether departments and SOAs ensured they obtained fair market value because there was little to no documentation on the information they used to ensure that quoted prices represented fair market value at the time of the transaction. (**section 2**).

In **sections 1, 2 and 3**, we make 11 recommendations to strengthen procurement policies on untendered contracts and 2 recommendations to improve public access to information.

In **section 4** we identify several management and administrative process weaknesses that likely contributed to performance shortfalls. **Section 4** has 12 recommendations to strengthen management and administrative processes.

1. Fair access to contracts not always assured

Provincial policy requires that all procurement over \$1,000 use competitive bidding to ensure fair access to government contracts and fair value for money. Sometimes it is not possible, or desirable, to obtain competitive bids. Provincial policy outlines 4 acceptable circumstances when competitive bids can be waived—see **Figure 2**.

Figure 2: The PAM identifies 4 acceptable circumstances

Acceptable circumstance	Policy guideline	Examples of situations that represent the acceptable circumstance
Sole source	Only one supplier is permitted to provide the goods/services and an assessment verifies that any other supplier is precluded.	To ensure compatibility with existing products, to recognize exclusive rights, such as licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer's representative. Supplier has a statutory monopoly. For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or original work. For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases.
Single source	Only one supplier is considered to meet all the operational, technical or performance requirements and that other suppliers providing similar goods or services are precluded from supplying.	When a standard has been established and only one supplier is capable of providing the goods or services. When the goods must be compatible with existing equipment and only one supplier can provide those goods.

Figure 2 (cont'd)

Acceptable circumstance	Policy guideline	Examples of situations that represent the acceptable circumstance
		Where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest. Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical consideration impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the construction or repair of roads.
Emergency	An unforeseen situation that poses a threat to life, health, property, public security or order, and the goods or services must be obtained as soon as possible to mitigate the associated risks. The urgent nature of the requirement does not permit a standard competitive bidding process.	There is a real or imminent threat to Manitoba's ability to protect the life or health of people, property, or to maintain security or order. Emergency Measures Organization (EMO) has identified an emergency situation that requires the procurement of goods or services.
Urgent	Only 1 supplier is contacted to provide the goods/services to meet an immediate need and an assessment verifies that any other supplier is not feasible or practical.	Failure to obtain certain goods/services in a timely manner will result in significant disruption to the program. Quantity of goods ordered or length of time an interim service is arranged with a supplier must be sufficient only to meet the immediate need. Issuing a long term contract or ordering additional inventory to meet future needs is not permissible.

Source: Procurement Administration Manual

The policy describes each of the 4 acceptable circumstances in sufficient detail, and includes information on the requirements for waiving competitive bids. Approval levels, procedures to be followed and examples of acceptable circumstances are included in the policy. References to legislation, trade agreements and other manuals are also included for clarification and as sources.

We looked at 10 files for each of 5 departments and 3 SOAs (see *Audit approach* section).

We assessed whether:

- acceptable circumstances for waiving of competitive bids were demonstrated (**section 1.1**).
- proper approvals were obtained (**section 1.2**).

1.1 Acceptable circumstances frequently not demonstrated

We assessed whether the decision not to tender was supported by one of the acceptable circumstances described in the PAM. To do this, we examined available documentation and discussed the particulars of the procurement transaction with department and SOA officials.

Departments

As **Figure 3** shows, acceptable circumstances were demonstrated for only 24 of 50 contracts.

Figure 3: Summary of results from our sample of 50 untendered contracts

Department	Acceptable circumstance demonstrated (# of contracts)						Acceptable circumstance not demonstrated	
	Emergency	Single source	Sole source	Urgent	Total	Dollar value (millions)	# of contracts	Dollar value (millions)
ANA	7				7	\$ 3.2	3	\$ 1.1
IEM			5		5	.2	5	5.0
MIT	1		2		3	1.0	7	22.0
Conservation	2	3		1	6	.6	4	.7
Justice		3			3	.1	7	1.8
Total	10	6	7	1	24	\$ 5.1	26	\$ 30.6

For the 26 untendered contracts where acceptable circumstances were not demonstrated, we summarized the reasons for not tendering into 5 categories (**Figure 4**) and discuss each one below.

Figure 4: Contracts where acceptable circumstances were not demonstrated

Department	Preferred vendor	Public policy and business case reasons for not tendering				Total
		First Nations and Northern Communities	Federal deadline	Professional services	Pre-approved engineering service providers	
ANA	2		1			3
IEM	5					5
MIT	2	3	1		1	7
Conservation	2	2				4
Justice	1			6		7
Total	12	5	2	6	1	26

The contracts in the Preferred Vendor category (total value about \$16 million) were directly awarded to vendors for various reasons. As **Figure 5** summarizes, the decisions to directly award these contracts may have unnecessarily denied competing vendors access to government contracts. As a result, Manitoba citizens may not have received the best value. We did not see evidence of any PSB involvement in these procurement transactions (the PSB employs the government's procurement experts). Because untendered service contracts have higher risks,

requiring departments to consult with the PSB before deciding to directly award a service contract may reduce the risks, preventing the concerns noted in **Figure 5**.

Figure 5: Contracts in the preferred vendor category

Reasons for not tendering	Our concerns with decisions made
Provisions in Request For Proposal (RFP)	
IEM – 2 contracts to 1 vendor - \$2,689,000 - The department indicated, “the RFP originally issued for the system included the ability for Manitoba to award future work, including maintenance and support to the successful proponent without further competition.” MIT – 1 contract - \$4,990,000 - The RFP for the first phase of the project included a commitment to negotiate with the existing vendor (if services satisfactory) before considering going to tender.	Appropriateness of including provisions in RFP or contracts that in effect promise future contracts.
Lack of qualified vendors who are not in a conflict	
Conservation – 1 contract - \$400,000 - The department indicated “the consultation/expert pool is small in Manitoba ... and it is difficult to find a consultant in Manitoba with the required qualifications without conflict.”	Sufficiency of effort to locate other qualified vendors. Appropriateness of direct awarding to a Manitoba vendor rather than seeking the required expertise in other provinces. Direct awarding of this contract may violate the AIT.
License renewals	
IEM – 2 contracts - \$2,223,000. Justice – 1 contract - \$241,000. The departments had been using the products for many years, and wanted to renew the licences.	While licence renewal is one of the situations under the Sole Source acceptable circumstance, unlimited consecutive renewals of a product licence may unnecessarily limit access to government contracts.
Favoured by department	
ANA – 1 contract - \$60,300 - Vendor was an experienced consultant that was used in the past. ANA – 1 contract - \$970,720 - Vendor was in the area having recently completed some flood mitigation work. MIT – 1 contract - \$4,280,000 – the department believed it would be too costly to change vendor for phase 2 of the project. IEM – 1 contract - \$50,000 - Vendor possessed qualities desired by the department. Conservation – 1 contract - \$84,960 - The department indicated very few consultants possessed the special technical capabilities as well as the strong fundamental understanding of policy and regulatory requirements. The vendor was used in the past.	Other vendors not given the opportunity to bid.

Contracts in the remaining 4 categories were not tendered because of alternative department practices for specific types of procurements; these practices are supported by either public policy objectives or business case reasons. Because acceptable circumstances were not demonstrated, the PSB should assess the appropriateness of the practices. The 4 recurring practices are described below:

First Nations and northern communities

Two sample items [1 contract and 1 sample item that was comprised of 16 contracts but was reported as 1 contract in the untendered contracts database] (MIT-\$7,876,987) relate to the construction and maintenance of winter roads. Staff said the short winter road season, combined with the remoteness of the communities and the need for many construction sites, made contracting with the local communities expedient. In addition, the department's documented justification states:

“The department has a policy to encourage northern aboriginal participation in remote construction projects. The direct contracts for the construction and maintenance of winter truck roads provide economic development opportunities, training to First Nations and community growth.”

Two contracts (Conservation-\$176,373) are with a First Nation, and relate to a cottage subdivision on provincial crown land adjacent to the First Nation reserve. These contracts stem from the Province's cottage lot development agreement signed with the First Nation. A major focus of this agreement is the negotiation of cooperative agreements with First Nations for the planning, development and marketing of cottage subdivisions. Department documents said the contracts support the Province's commitment to provide Manitobans with an opportunity to buy cottage lots and the creation of employment opportunities for the First Nation communities during construction. Another contract (MIT-\$1,961,000) was directly awarded to a northern community. The documented explanation said the arrangement was beneficial to both the Province and the municipality.

Federal deadline

Two contracts (ANA-\$41,170 and MIT-\$2,862,000) were not tendered because the departments said that federal funding deadlines created urgent requirements and there was not enough time to properly complete the tender process. Both contracts were directly awarded to a supplier that the department had previously used.

Professional services

Six contracts (Justice-\$1,580,678) were not tendered because the Corrections Division directly negotiates fee-for-service contracts with dental and medical practitioners (to provide services to inmates). Contracts are for 1 year, but can be renewed indefinitely. Of the 6 service providers in our sample, 3 have been under contract for at least 9 consecutive years, while one service provider has been under contract for 19 consecutive years. The contract hourly rates are within the standard rate ranges, set by professional bodies. (We did not audit how the specific rate within the range was selected or how the service providers were selected.)

Pre-approved Engineering Service Providers

One contract (MIT-\$19,912) was not tendered because it was handled through the department's process of directly negotiating with pre-approved engineering service providers for contracts up to \$100,000. The Department maintains a registry of approved Engineering Service Providers. Its process for directly negotiating with pre-approved service providers was approved by Treasury Board in 2008 and is consistent with the AIT. (We did not audit the Department's process for adding an engineering service provider to its registry.)

Special Operating Agencies

As **Figure 6** shows, 22 of the 30 contracts examined were supported by an acceptable circumstance, while 8 were not. Our sample did not include any contracts with amendments.

Figure 6: Summary of results from our sample of 30 untendered contracts

Department	Acceptable circumstance demonstrated (# of contracts)						Acceptable circumstance not demonstrated	
	Emergency	Single source	Sole source	Urgent	Total	Dollar value	# of contracts	Dollar value
FDC		2	4	3	9	104,611	1	11,235
MERLIN			4		4	122,123	6	674,045
VEMA	1		8		9	83,170	1	10,507
Total	1	2	16	3	22	\$ 309,905	8	\$ 695,788

Six of the 8 purchases that did not demonstrate an acceptable circumstance were made by MERLIN. The Deputy Minister responsible for MERLIN approved a policy in January 2012 that gives the COO the ability to "waive bidding requirements where expedient". This policy allows the SOA to bypass PAM requirements.

No notification of intent to directly award

The PAM does not require that departments make public their intent to directly award a contract. Yet this type of notice promotes transparency and fairness in the procurement process by letting potential suppliers declare an interest in bidding on the contract. The Alberta, British Columbia and federal governments require their departments to make public their intent to directly award contracts over a set amount.

Recommendation 1: We recommend that the PSB assess whether procurement practices that departments and SOAs use instead of obtaining competitive bids are reasonable.

- If the PSB finds the practices are reasonable, we recommend that it amend the PAM.
- If the PSB finds the practices are not reasonable, we recommend that it work with the department to develop acceptable procurement practices for the situation in question.

Recommendation 2: We recommend that the PSB amend the PAM to require that departments and SOAs:

- Consult with the PSB before directly awarding a service contract over a set amount.
- Include PSB advisory notes in the procurement record and any required TB submission.

Recommendation 3: We recommend that the PSB amend the PAM to require departments to make public their intent to directly award a contract over a set amount.

1.2 Proper approvals for the awarding of untendered contracts not always obtained

Departments

Sections 1.2 and 1.3 of the GMA define the purchase approval levels required for various types of purchases. Proper approvals are important to ensure that the appropriate level of management makes purchase decisions and funds are available for those purchases.

The GMA defines general approval levels for untendered contracts as follows:

Treasury Board:	over \$50,000
Minister:	\$30,001 to \$50,000
Deputy Minister:	\$5,001 to \$30,000
Delegated Officials:	\$5,000 and under

As **Figure 7** shows, appropriate approvals were obtained for 39 of the 50 contracts we examined. For 25 of the 39 contracts, acceptable circumstances were not demonstrated (approvers therefore authorized the policy overrides).

Figure 7: Required approvals not obtained for 11 contracts

	Appropriate approvals obtained?		Total
	Yes	No	
Acceptable circumstance:			
• Demonstrated	14	10	24
• Not demonstrated	25	1	26
Total	39	11	50

Eleven required approvals were not obtained:

- **ANA** – proper approvals were not obtained for 5 emergency contracts (2011 flood) and for 1 contract where an acceptable circumstance was not demonstrated

All 6 contracts were approved by a regional director (or by an official designated to sign for the regional director). Because of the dollar values of the 6 contracts, 2 required Deputy Minister approval and 4 required Treasury Board approval.

- **Conservation** – proper approvals were not obtained for 4 contracts.

Two sole source contracts were approved by the Minister (for \$225,000 and \$200,500). The department said it did not seek Treasury Board approval because the 2 contracts related to The Environment Act. Because of the contract amounts, Treasury Board approval was required.

A sole source contract with the federal government for an international climate change conference (for \$53,279) was approved by the Assistant Deputy Minister. Because of the contract amount, Treasury Board approval was required.

One urgent contract was approved by a parks supervisor but the contract amount of \$2,200 was more than double his approval authority of \$1,000.

- **MIT** – proper approval was not obtained for one emergency contract; another sample of 10 emergency contracts, and 17 of 19 related amendments, were also not properly approved.

In June 2008, Treasury Board approved expanded delegated authority for MIT's Water Control Operations. This significantly increased approval authorities for MIT officials. However, approval limits for untendered purchases remained at the levels in the GMA.

In March 2011, Treasury Board amended the approval limits for untendered contracts needed for the 2011 flood response/prevention effort as follows:

Treasury Board also authorized the Department to engage contractors/equipment for urgent and emergent flood response/prevention work based on the following methodology:

- For short duration work of less than 1 week, payment based upon full Manitoba Heavy Construction Association (MHCA) Annual Directory rates; and

- For work in excess of 1 week, 90% of the MHCA rate will be paid.

Treasury Board noted that under these circumstances the selection of contractors will be based on the contractor's proximity to a work location and their ability/resources to satisfactorily complete the work in the required timeframe. For work under \$5,000 a Director, Manager or Section Head may approve work, and for work over \$5,000, but not exceeding \$50,000, approval by the Executive Director of Construction and Maintenance or the Executive Director of Water Control and Structures as required.

These amended approval limits removed the need to obtain deputy minister and minister approvals for untendered contracts between \$5,000 and \$50,000. Treasury Board approval was still required for untendered contracts over \$50,000.

The contract in our original sample (\$975,000) was approved by the Executive Director of Water Control and Structures within MIT. Because the contract exceeded \$50,000, Treasury Board approval was required.

To assess whether other untendered MIT emergency contracts were properly approved, we selected another 10 untendered emergency contracts, each with subsequent amendments.

- All 10 contracts (between \$223,000 and \$939,000) were approved by the Executive Director, Water Control and Structures. Because all 10 contracts were over \$50,000, Treasury Board approval was required.
- The MIT emergency contracts included 19 amendments (totaling \$9.2 mil) that ranged from \$10,000 to \$2,238,000. Amendments to untendered contracts should follow the same approval limits as untendered contracts. As such, 17 of the 19 amendments required Treasury Board approval, but 15 were approved by the Deputy Minister and 2 were approved by the Executive Director, Water Control and Structures. The 2 other amendments, for \$10,000 and \$15,000, were appropriately approved by the Deputy Minister.

Special Operating Agencies

The operating charters for each of the 3 SOAs we examined include an exemption from the general approvals section of the GMA. As a result, each SOA has its own delegation-of-authority policies.

MERLIN and VEMA have granted their COOs unlimited approvals for untendered contracts. FDC's delegation of authority schedule requires GMA-level approvals for untendered contracts.

- **MERLIN** - consistent with its delegation of authority, the COO (or acting COO) approved all 10 contracts we examined. The contracts ranged from \$1,412 to \$235,000.
- **VEMA** - officials said staff would obtain required approvals following the delegation of authority chart before contracting for goods or services, but that they did not document these approvals. Because documentation was not available, we could not tell if contract approvals occurred before payments. The contracts ranged from \$1,016 to \$53,485.
- **FDC** - did not obtain appropriate approvals for 4 of 10 contracts, between \$5,300 and \$46,740 (FDC adopted GMA spending authority levels for untendered contracts). Because of

the contract amounts, 3 required Deputy Minister approval and 1 required Minister approval. The contracts in our sample ranged from \$3,000 to \$46,740.

To ensure purchases are appropriate and comply with related policies (or authorized overrides), proper approvals are essential. Our findings indicate that obtaining approvals for untendered emergency contracts poses a particular challenge.

Recommendation 4: We recommend that the Treasury Board Secretariat:

- develop guidelines for delegating purchasing authorities for untendered contracts and related extensions during emergency events (in particular the purchasing authorities for Treasury Board, ministers and deputy ministers).
- require comprehensive reporting after an emergency event on how the delegated authority was used.

Recommendation 5: We recommend that VEMA amend its policies to require the documentation of proper contract approvals (before payment).

2. We cannot conclude on whether departments and SOAs ensured fair market value was obtained

Obtaining competitive bids is an important way for government to ensure that it pays fair prices for goods and services. When competitive bids are waived, this assurance is eliminated. So it is important that staff who buy goods and services follow, and document, procedures to assess if prices quoted are fair market value.

For the vast majority of the 80 contracts we examined, there was no documentation to show that the price quoted represented fair market value.

Department and SOA officials said program staff have the expertise to deal with the purchases in their program areas and that they would know the fair market value of goods and services.

Having staff document why they think quotes represent fair market value promotes transparency in procurement decisions and provides needed assurance to transaction approvers.

Because there was little to no documentation on the information that department and SOA officials used to ensure that prices represented fair market value at the time of the transaction, we cannot conclude on whether they ensured fair value was obtained.

Recommendation 6: We recommend that the PSB update the PAM to require that departments and SOAs analyse and document how the price quoted on an untendered contract represents fair market value. The analysis should be completed prior to contract signing.

3. Significant gaps in public information on untendered contracts

The FAA and the PAM require that departments publicly disclose untendered contracts greater than \$1,000 within one month of signing. The government created a public access database to house the required untendered contract information.

We assessed whether:

- required information is disclosed publicly in a timely manner (**section 3.1**)
- public information is easily accessed (**section 3.2**)
- disclosure thresholds are periodically reviewed and updated (**section 3.3**)

3.1 Most contracts not disclosed within one month, many not at all

We examined the information in the public access database to see if untendered contracts were disclosed within the required one month.

Departments and SOAs

During our 18-month audit period, the 5 departments we examined did not disclose many (1,857 of 2,133, 87%) of the untendered contracts they recorded in the public access database (including untendered contracts from their SOAs) within one month of contract signing, as the FAA requires. MIT and Conservation never met the one-month requirement during our audit. For contracts not publicly disclosed within one month, the average time between signing of the contract and disclosure ranged from 48 to 182 days; the longest time between signing and disclosure ranged from 231 to 525 days. **See Figure 9.**

As a result, for long periods, many contracts that should have been disclosed were not.

Figure 9: Timeliness of public disclosure

Departments	Untendered contracts disclosed						
	Total	Within one month of signing		After one month of signing			
				Total		Timeframe between signing and disclosure	
						Average # of days	Largest # of days
ANA	77	2	3%	75	97%	139	289
IEM	285	74	26%	211	74%	97	356
MIT	1,244	0	-	1,244	100%	182	525
Conservation	202	0	-	202	100	109	231
Justice	325	200	62%	125	38%	48	330
Total	2,133	276	13%	1,857	87%		

We conducted a test to assess if untendered contracts were not being disclosed for reasons other than timing. Using department records, we selected 10 contracts from each of the 5 departments we examined (total of 50). We focused on the types of vendors we judged to be of higher risk of not being tendered. We also selected 10 higher dollar value invoices from VEMA (the only SOA of the 3 we examined that was publicly disclosing untendered contracts during our audit). If department or VEMA records indicated that contracts were tendered, we verified this by reviewing tender documentation. If contracts were not tendered, we looked to see if they were disclosed in the public access database. For all 5 departments and VEMA, we identified untendered contracts not included in the database. **Figure 10** shows the results.

Figure 10: Summary of Completeness Testing – public access database

Department or SOA	Untendered contracts in sample of 10	Untendered contracts not disclosed	Dollar value of untendered contracts not disclosed
ANA	8	1	\$ 69,540
IEM	6	3	538,242
MIT	4	3	485,650
Conservation	1	1	200,000
Justice	3	2	29,320
VEMA	1	1	1,052,000
Total	23	11	\$ 2,374,752

In addition to the results of our completeness testing, we found many other untendered contracts that were not disclosed. **See Figure 11.** While we did not try to identify all undisclosed untendered contracts, the results of our procedures indicate that contracts totalling at least \$183.2 million were not disclosed. When compared to the \$92 million that was disclosed during our audit period, our findings indicate that the public disclosure of untendered contracts is significantly understated.

Section 4.4 discusses the administrative processes for compiling untendered contract information.

Figure 11: Many untendered contacts are not disclosed

Contracts not disclosed	Value \$ mil
ANA did not publicly disclose its untendered contracts for 11 of the 18 months of our audit period. At our request, the department compiled a listing of untendered contracts and their related values for the 11-month period. (We did not audit the completeness of this listing.)	1.8
We reconciled the untendered contracts information prepared by the other 4 departments' to the information that was publicly disclosed. For Conservation, we found 183 untendered contracts, from 2011, that were not publicly disclosed as of December 2012.	2.9
FDC and MERLIN were not tracking or publicly disclosing untendered contracts. At our request, they compiled lists of their untendered contracts for the 18-month audit period. (We did not audit the completeness of the lists.)	1.2
In our initial interviews, one department said they did not disclose sole source contracts as untendered contracts. Department staff said that by definition "sole source" contracts could not be tendered and therefore they did not have to be reported as untendered. The department said it issued 11 sole source contracts during our 18-month audit period. (We did not audit the completeness of this list.)	.4
The PAM requires the reporting of contract amendments in the public access database.	
Eight of our sample of 80 untendered contracts had amendments. Seven of these amendments were not publicly disclosed.	6.3
Our additional sample of MIT flood related emergency contracts had 19 amendments. These contract amendments were not disclosed.	9.2
The FAA requires that the value of untendered contracts, or an estimate where the contract value is uncertain, be disclosed. This requirement is not included in the PAM. We obtained a download from the database and found several omissions:	
The values of 74 contracts from Justice were not disclosed; the department cited client solicitor privilege.	unknown

Figure 11 (cont'd)

Contracts not disclosed	Value \$ mil
• Nine contracts from other departments did not show the estimated contract total.	unknown
• One of our sample items was a purchase made against an outline agreement. The purchase of \$9,213 was disclosed, whereas the \$700,000 potential value of the outline agreement should have been disclosed. (As defined in the PAM, an outline agreement is a long-term purchase agreement / contract with a vendor for specific materials or services for access by departments across government.)	unknown
The FAA requires that untendered contracts be publicly disclosed for 2 years after contract signing, and be available by request for a further 5 years. Regardless of the requirement, officials said that contracts are maintained in the public access database for the full 7 years. While this is a significant improvement over the actual requirement, all contracts with terms longer than 7 years are removed from the database after the 7 th year, even if they are still active. We believe contracts should remain in the public access database as long as they are active (original term and any extensions). We did not calculate the number or value of contracts no longer disclosed because of this limitation.	unknown
The PAM and FAA provide broad definitions of a contract, while the GMA has a narrower definition. Department staff who rely on the GMA for direction may disclose only untendered contracts as defined by the GMA, excluding, for example, p-card transactions.	unknown
Five of the contracts we examined related to purchases made in US funds. These items were publicly reported at the US amount, not the Canadian equivalent. The PAM does not include guidance for the public disclosure of untendered contracts in foreign currencies.	unknown
Our completeness test results Figure 10	2.4
Subtotal	24.2
As discussed in Chapter 4 of this report, the Department of Health did not disclose the estimated value of its February 21, 2012 untendered 10-year contract with Shock Trauma Air Rescue Society (STARS).	159
Total	183.2

Recommendation 7: We recommend that the PSB amend the PAM to include the FAA disclosure requirement for contracts with uncertain values.

Recommendation 8: We recommend that the PSB amend the PAM to require that contracts be kept in the public access database as long as they are active.

Recommendation 9: We recommend that the Treasury Board Secretariat amend the GMA's definition of contract to match the PAM definition.

Recommendation 10: We recommend that the PSB amend the PAM to add disclosure requirements for untendered contracts in foreign currencies.

3.2 Public access to untendered contract database severely limited; database hard to use and unreliable

To achieve transparency, public information must be easy to find and easy to read and understand.

One computer for whole province, no online access—Section 80(4) of the FAA requires that information on untendered contracts be “available for inspection by the public during normal business hours”. The government has made untendered contract information available to the public on one computer in the Legislative Building Reading Room (Room 260) during business hours. This section of the FAA was written in 1996, when online access to information was uncommon. It is now reasonable to expect public internet access to this information.

Database limitations—information in the database can be searched by contract value, company or vendor name, department, key words, and contract date. But the database has several limitations including:

search capabilities

- cannot search by amount or date ranges
- cannot search by parts of words, only complete words

report generation

- cannot list all outstanding contracts for a department at a given time
- cannot export information to a memory stick; users can only print information or save and email a print screen of it

help features

- no user HELP information on how the system works.

In addition, when we used the computer:

- We needed login and other help from the Reading Room staff.
- Searching by vendor name or amounts yielded inconsistent results.

- The database disconnected without warning several times, requiring us to start again. This caused our search history to be limited.
- Information in the purpose field of some contracts overwrote the amount field, making it illegible.
- Links did not always work properly.
- We could not find 5 contracts that we knew (based on a download of data) were in the database.

These limitations reduce users' ability to find information. They also prevent the government from achieving its goal of disclosing information on untendered contracts.

Recommendation 11: We recommend that the PSB make public access to untendered contract information available on the internet.

Recommendation 12: We recommend that the PSB ensure its public internet access to untendered contract information has a comprehensive search engine. We also recommend that, in the interim, PSB improve the search and reporting capabilities of the existing public access database so users can:

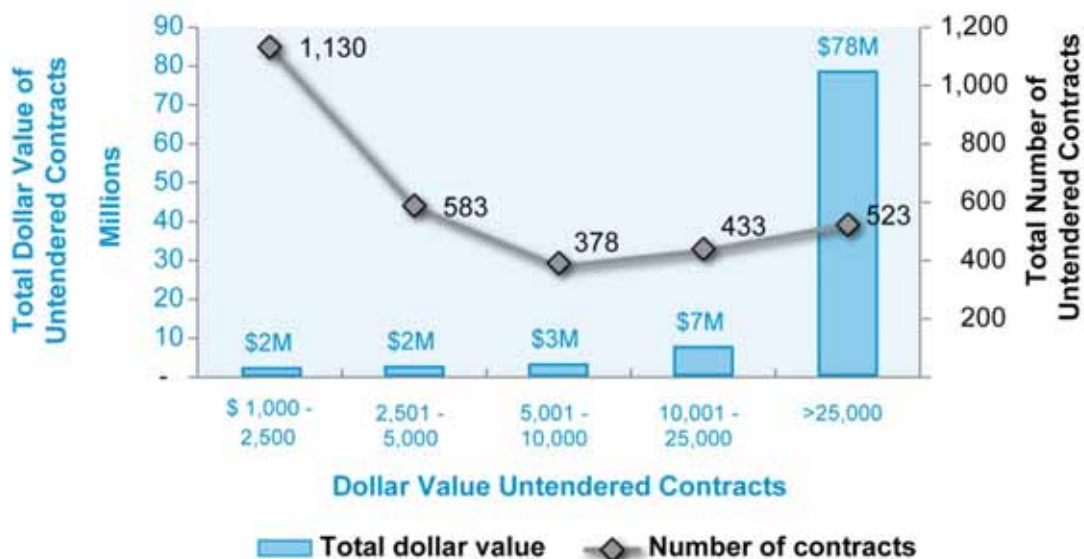
- search by date range and by all fields in the database.
- extract large quantities of data.
- display all outstanding contracts for a department at a specific time.

3.3 Disclosure threshold unchanged in 17 years

In 1996, the *FAA* set the disclosure threshold for untendered contracts at \$1,000. It is still \$1,000, 17 years later. It is unclear if the threshold still reflects the Province's disclosure objective.

The current low threshold rate captures many small transactions. The public access database shows that 3,047 untendered contracts (\$91.9M unaudited) were disclosed during our audit (see **section 3.2** on whether the database is complete). As **Figure 12** shows, 1,713 (56%) contracts were under \$5,000 and accounted for only 4% (\$4 mil) of the total dollar value disclosed. A \$10,000 threshold (consistent with values set by Alberta and Canada for disclosing untendered contracts) would cut the administrative workload by about two thirds (based on the current process described in **section 4.4**). Yet the Province would still publicly report 92% (\$85 mil) of the dollar value of untendered contracts it now reports.

Figure 12: Value vs volume of contracts



Recommendation 13: We recommend that the Province periodically review whether the threshold for reporting untendered contracts is consistent with its disclosure objectives and adjust it if necessary.

4. Stronger management and administrative practices needed

The following management and administrative weaknesses likely contributed to the performance shortfalls discussed in **sections 1, 2 and 3**.

4.1 File documentation fragmented and incomplete

Proper documentation is essential to show that contracting practises comply with policy. The PAM requires parties to keep a procurement record. PSB officials say this means that all departments must keep a complete record of procurement available in a central location.

The PAM has a checklist of required documentation. The sections applying to untendered contracts are procurement planning, procurement strategies, contract award, post award, and notes to file.

For all 5 departments we audited, we often had to obtain documents from staff throughout the department.

Very little, if any, planning documentation was in the files for untendered contracts where Treasury Board approval was not required (18 of 50 contracts in our sample). For purchases requiring Treasury Board approval (32 of 50 contracts), the Treasury Board submissions

prepared by departments included information on procurement planning. Not all files included the TB submissions and little other planning information was in the files. The PAM does not require that Treasury Board submissions be included in the record of procurement.

Reasons and supporting documents for waiving competitive bids were available for 26 of the 50 contracts. For 18 of 50 contracts, only a reason was given (without supporting documentation) and for 6 contracts no reason was documented.

For the 3 SOAs we audited, detailed records of procurement were not available. Documentation was limited to invoices and purchase orders. VEMA documented reasons for not tendering 7 of 10 contracts, though only in reporting untendered contracts to the department.

As **section 2** notes, there was little or no documentation available on the information departments and SOAs used to ensure that prices quoted represented fair market value at the time of the transactions.

The failure to properly compile the procurement record, contrary to the PAM, means that needed information may be unavailable for review by authorized department staff, internal and external auditors, and the public (in a *Freedom of Information and Protection of Privacy Act* request).

The PAM is vague on how its documentation requirements can vary depending on value and type of untendered contract. Its checklist says, “the record shall contain at a minimum, the following documents or information relating to the procurement process (if relevant)”. The conditions that would make the documents irrelevant are not defined, increasing the risk of inconsistent interpretation.

Recommendation 14: We recommend that the PSB improve guidance on documentation for untendered procurement transactions in the PAM by clearly specifying which documents are mandatory and requiring reasons for waiving discretionary documents.

4.2 No compliance monitoring

The Province’s *Framework for Effective Comptrollership in the Government of Manitoba* includes “establishing and monitoring appropriate control systems” in its definition of comptrollership. The Framework outlines the importance of a quality assurance process to identify deviations from policy and training needs. Monitoring for compliance with policies, particularly in higher risk areas such as the waiving of competitive bids, helps ensure a prompt response to non-compliance.

In April 2013, the PSB told departments and special operating agencies it intended to monitor untendered contracts for compliance with provincial policies. As of the end of our field work (July 3, 2013) the PSB had not done any monitoring.

In addition to reviews by a central agency, individual departments need to conduct their own reviews of procurement. None of the departments we examined did so.

At the time of our audit, the Department of Finance was responsible for monitoring that departments were publicly disclosing their untendered contracts. During our 18-month audit

period, Finance sent reminder emails on only 4 different dates. As of April 18, 2013, 8 departments had many outstanding bi-weekly untendered contracts reports. One department, ANA, submitted reports for only 7 of the 18 months of our audit period. Finance did not follow up on its reminder emails. Nor did it raise the continued non-compliance with the executive financial officers and deputy ministers. In addition, Finance did not review the information departments reported to see if untendered contracts were being reported within one month of signing (the FAA and PAM reporting requirements).

On April 1, 2013, responsibility for monitoring public reporting was transferred to the PSB.

Recommendation 15: We recommend that the PSB implement a risk-based process to monitor department and SOA compliance with policies on waiving competitive bids (including the policy on public disclosure). We also recommend that the PSB report compliance problems to the department's deputy minister.

Recommendation 16: We recommend that department executive finance officers randomly review higher-risk procurement transactions to ensure internal controls function properly.

4.3 Limited communication of untendered contract policies

Proper communication of new and revised policies helps ensure users know about the policy and understand its new or revised requirements. Communication involves more than just publishing a document that is accessible and understandable—organizations must effectively deliver messages on the policy to the expected users of it.

The section of the PAM on the Waiving of Competitive Bids was issued in January 2011. The PSB's communication effort was limited to its director attending a November 2010 government-wide executive financial officer meeting. We could not find evidence that the policy was communicated to SOAs. It is unlikely that the PSB's communication effort was sufficient to ensure the policy was effectively delivered to users.

The Province lacks an administrative policy development framework. Such a framework would include guidance on how to properly communicate new and revised policies. Key components of a well-developed communication effort would include:

- identifying the target audience.
- explaining key themes and messages.
- deciding how to best communicate a policy (examples include emails on the policy and information awareness sessions).
- establishing timing to communicate.
- taking steps to communicate regularly.
- evaluating results of communicating.

Recommendation 17: We recommend that the Treasury Board Secretariat develop an administrative policy development framework.

Recommendation 18: We recommend that PSB develop and implement a communication strategy to ensure that department and SOA officials know and understand the PAM requirements.

4.4 Inefficient and error prone process to add information to public database

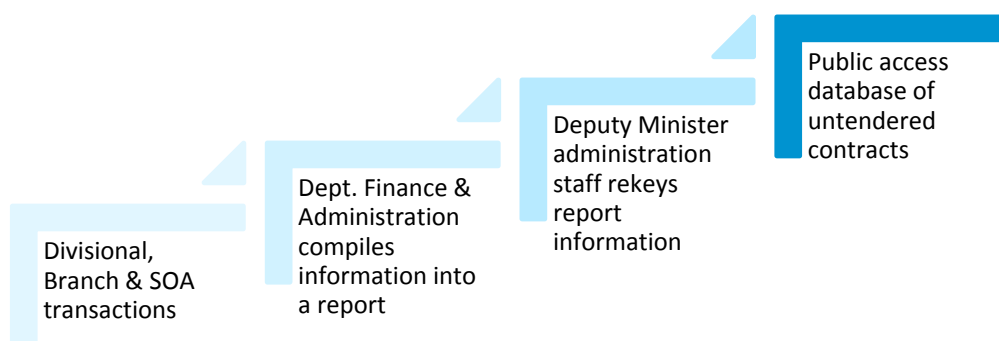
Database does not get its information from SAP

The Province uses SAP, an enterprise resource planning (ERP) system for the accounting and key business functions of government, including procurement. This system can gather detailed information on contracts. However, the public access database of untendered contract information does not get untendered contract information from SAP.

Entry of information to public access database inefficient

Finance and administration areas of departments manually compile bi-weekly untendered contract reports using information from divisions and SOAs. Some departments use SAP to test if this information is complete. These reports go to each department's deputy minister and administrative staff then manually enter the information into the public access database (see **Figure 13**). This process is inefficient because staff efforts are duplicated. In addition, re-entering information increases the risk of input errors. MIT does not follow this process; its finance and administration staff enter its information directly into the public access database, so the deputy minister staff don't have to re-enter it.

Figure 13: How information gets into the public access database



The finance and administration areas, except MIT's, cannot enter information into, or create reports from, the public access database. Consequently, they do not know if information has been entered accurately and completely. Having finance and administration areas enter untendered contract information directly into the public access database would let them verify that information from departmental reports was entered accurately.

We reconciled the untendered contracts information prepared by the departments we examined to the information publicly disclosed. There were many discrepancies. For example: one contract was recorded in the department's report as \$830,337, but in the public access database as \$8,307.37. The difference of \$822,033.63 was undetected.

Section 3.1 fully details our concerns with the completeness of the public access database.

SOAs do not use SAP

Because SOAs do not use SAP to record their accounting and business transactions, opportunities to make the SOA public disclosure process more efficient are limited.

Recommendation 19: We recommend that the Department of Finance, consulting with the PSB, use SAP to generate the untendered contract information for public disclosure. In the interim, we recommend that department finance staff directly enter their information in the public access database and ensure the information is complete and accurate.

4.5 Many contracts not properly recorded in SAP

A government-wide contract database is an important management tool. It provides information on the volume, values and types of goods and services acquired, including the separate tracking of untendered contracts. Comprehensive procurement information enables better planning. It allows central service providers, such as the PSB, to coordinate cross-department purchases, possibly saving costs with volume discounts. Also, an accurate and complete contract database would allow more efficient public disclosure of untendered contracts (see **section 4.4**).

Many contracts initiated outside SAP

The PAM requires that all government departments use an electronic purchase order in SAP to buy goods over \$2,500 and services over \$5,000. Purchase orders have valuable information on the goods and services purchased and the information required for government-wide procurement planning. For the 50 untendered contracts we examined:

- Conservation, Justice, IEM and MIT used an electronic purchase order in SAP to initiate the contracts that met the dollar-value requirements.
- ANA did not use electronic purchase orders for any contracts that met the dollar-value requirements.

A report the Department of Finance commissioned found that for the year ended March 31, 2012, about 30% of departmental spending was not made through SAP-initiated purchase orders.

Justification for not tendering frequently not recorded in SAP

The PAM requires that the reasons for not tendering a contract be recorded in the Business Case tab of the purchase order.

- MIT documented the reasons for only 2 of the 9 contracts we examined that met the dollar value requirement.
- Conservation, IEM, and Justice did not document the reasons for any of the 27 contracts that met the dollar value requirement.

Untendered categories in SAP not consistent with acceptable circumstances

When recording a contract in SAP, staff must select the type of purchase from a drop down list. The items in the list relating to untendered contracts are not consistent with the 4 acceptable circumstances in the PAM for waiving competitive bids.

These deficiencies compromise the ability to use SAP information for procurement analysis and planning.

Recommendation 20: We recommend that departments enforce the requirement to use a purchase order in SAP for all purchases of goods over \$2,500 and services over \$5,000. We also recommend that the reasons for not tendering a contract be properly documented in the Business Case tab of the purchase order.

Recommendation 21: We recommend that the Department of Finance amend the purchase category fields in SAP to include the acceptable circumstances for waiving competitive bids, from the PAM.

4.6 Other matters

Clarification needed on who the PAM applies to

The PAM says it applies to departments, SOAs, and agencies, boards, commissions and committees that report to the Executive Branch of government.

The PAM lists several exceptions, but describes them by type, not by entity. For example exceptions include crown agencies and corporations of the Manitoba Government and health and social service entities. It is hard to tell which agencies, boards, commissions and committees must comply with the PAM. And the Treasury Board Secretariat could not give us a list of these entities.

Recommendation 22: We recommend that Treasury Board Secretariat develop a list of organizations that need to comply with the PAM.

Many sections in PAM remain under construction

The PAM table of contents has several sections with no content, for example, contract amendments and procurement ethics. To ensure an appropriate and consistent approach to all aspects of procurement, the manual needs to be completed promptly.

Recommendation 23: We recommend that the PSB develop and implement a plan to promptly complete the PAM.

PAM not referenced in Comptrollership Framework

The government's *Comptrollership Framework* document includes control self-assessment questionnaires to guide departments in building effective comptrollership functions. One of the questionnaires is for expenditures. It lists the following two requirements for untendered purchases:

- Do all purchases made without competitive bids meet with the organization's policy or receive special authorization?
- Where such purchases (as described above) result in an expenditure of \$1,000 or more, are these contracts made public in accordance with section 80 of the FAA?

The questionnaire refers to purchases made without competitive bids, but it does not explicitly reference the PAM requirements for waiving competitive bids.

Recommendation 24: We recommend that the Provincial Comptroller amend the control self-assessment questionnaire on procurement processes (part of the *Comptrollership Framework* document) to include the PAM requirements for waiving competitive bids, including SAP requirements discussed in Recommendation 20.

SOA operating charters out of date

None of the operating charters for the SOAs we examined were updated to include compliance with the PAM. All the charters were unchanged from when they were created. VEMA's charter is dated 2010; FDC's charter was last updated in 1996 and MERLIN's in 1995.

Recommendation 25: We recommend that departments with SOAs review and update their operating charters yearly.

Summary of recommendations and response of officials

Province, Treasury Board

4. We recommend that the Treasury Board Secretariat:

- develop guidelines for delegating purchasing authorities for untendered contracts and related extensions during emergency events (in particular the purchasing authorities for Treasury Board, ministers and deputy ministers).
- require comprehensive reporting after an emergency event on how the delegated authority was used. (**section 1.2**)

Response: The General Manual of Administration (GMA) outlines the approval requirements for untendered contracts and includes the legislative requirement for reporting all untendered contracts over \$1,000.00. The delegated authorities for Special Operating Agencies are approved each year during Treasury Board's review of their operating charters. The Treasury Board Secretariat will review the provisions for emergency expenditures in other jurisdictions to determine whether changes to the current process are warranted.

9. We recommend that the Treasury Board Secretariat amend the GMA's definition of contract to match the PAM definition. (**section 3.1**)

Response: The Treasury Board Secretariat agrees with this recommendation and will revise the relevant section of the GMA accordingly.

13. We recommend that the Province periodically review whether the threshold for the reporting of untendered contracts is consistent with its disclosure objectives and adjust it if necessary. (**section 3.3**)

Response: Government does and will continue to review the threshold.

17. We recommend that the Treasury Board Secretariat develop an administrative policy development framework. (**section 4.3**)

Response: The Treasury Board Secretariat communicates new and revised policies through the finance and administration community and human resource groups, if applicable. We also advise that work is currently underway to improve the Corporate Policy intranet site to guide development of government-wide policies, standards and guidelines.

22. We recommend that the Treasury Board Secretariat develop a list of organizations that need to comply with the PAM. (**section 4.6**)

Response: The Treasury Board Secretariat will ask PSB to prepare a recommended list of organizations that should comply with the PAM.

Department of Finance, Provincial Comptroller

19. We recommend that the Department of Finance, consulting with the PSB, use SAP to generate the untendered contract information for public disclosure. In the interim, we recommend that department finance staff directly enter their information in the public access database and ensure the information is complete and accurate. **(section 4.4)**

Response: The Department of Finance, in consultation with PSB, agrees to consider using SAP to generate the untendered contract information for public disclosure.

21. We recommend that the Department of Finance amend the purchase category fields in SAP to include the acceptable circumstances for waiving competitive bids, from the PAM. **(section 4.5)**

Response: In consultation with the Department of Finance, PSB will take steps to make the recommended changes to the purchase category field in SAP.

24. We recommend that the Provincial Comptroller amend the control self-assessment questionnaire on procurement processes (part of the Comptrollership Framework document) to include the PAM requirements for waiving competitive bids, including SAP requirements discussed in Recommendation 20. **(section 4.6)**

Response: The Provincial Comptroller agrees to consider amending the self-assessment questionnaire on procurement processes, as part of the Comptrollership Framework document, to include the PAM requirements for waiving competitive bids. The amendments to the self-assessment questionnaire will require the use of purchase orders in SAP for all purchases of goods over \$2,500 and services over \$5,000 including the proper documentation of the reasons for not tendering a contract, and therefore, we will coordinate our actions with PSB as business owners of the materials management (MM) module of SAP.

Departments and SOAs

5. We recommend that VEMA amend its policies to require the documentation of proper contract approvals (before payment). **(section 1.2)**

Response: VEMA has amended its policies to include the requirement for documented approvals prior to contract award.

16. We recommend that departmental executive financial officers randomly review higher-risk procurement transactions to ensure internal controls function properly. **(section 4.2)**

Response: Government recognizes the value of risk-based approaches to monitoring financial transactions and PSB will continue to assist the departments in determining procurement-specific risks.

20. We recommend that departments enforce the requirement to use a purchase order in SAP for all purchases of goods over \$2,500 and services over \$5,000. We also recommend that the reasons for not tendering a contract be properly documented in the Business Case tab of the purchase order. **(section 4.5)**

Response: PSB will continue to communicate the existing policy regarding SAP procedures and use of the Business Case field to document justifications for waiving a competitive process, which is currently outlined in the PAM (Contract Awards-Untendered Contracts).

25. We recommend that departments with SOAs review and update the operating charters yearly. **(section 4.6)**

Response: Departments with SOAs do review and update the operating charters yearly for review and direction by Treasury Board during the Estimates process.

Department of Infrastructure and Transportation, Procurement Services Branch

1. We recommend that the PSB assess whether procurement practices that departments and SOAs use instead of obtaining competitive bids are reasonable.
- If the PSB finds the practices are reasonable, we recommend it amend the PAM as needed.
 - If the PSB finds that the practices are not reasonable, we recommend that it work with the department to develop acceptable procurement practices for the situation in question. **(section 1.1)**

Response: PSB will conduct the recommended assessment of procurement practices. The results of this assessment will be used in determining what action is required.

2. We recommend that the PSB amend the PAM to require that departments and SOAs:
- consult with the PSB prior to directly awarding a service contract over a set amount.
 - include the PSB advisory notes in the procurement record and in any required Treasury Board submission. **(section 1.1)**

Response: PSB will develop a process to engage with departments prior to contract award, and to ensure the procurement record includes required information.

3. We recommend that the PSB amend the PAM to require that departments make public their intent to directly award a contract over a set amount. **(section 1.1)**

Response: The PAM represents the current state of legislative and policy requirements regarding the disclosure of untendered contracts. As those policies change, the PAM will be revised to reflect those changes.

6. We recommend that the PSB update the PAM to require that departments and SOAs analyse and document how the price quoted on an untendered contract represents fair market value. The analysis should be conducted prior to contract signing. **(section 2)**

Response: PSB will amend the PAM to include the requirement for departments and SOAs to perform a value analysis in advance of awarding untendered contracts.

7. We recommend that the PSB amend the PAM to include the FAA disclosure requirement for contracts with uncertain values. **(section 3.1)**

Response: PSB will amend the PAM to include this requirement.

8. We recommend that the PSB amend the PAM to require that contracts be kept in the public access database for as long as they are active. **(section 3.1)**

Response: The PAM represents the current state of legislative and policy requirements regarding the disclosure of untendered contracts. As those policies change, the PAM will be revised to reflect those changes.

10. We recommend that the PSB amend the PAM to add disclosure requirements of untendered contracts in foreign currencies. **(section 3.1)**

Response: PSB will amend this requirement within the PAM.

11. We recommend that the PSB make public access to untendered contract information available on the internet. **(section 3.2)**

12. We recommend that the PSB ensure its public internet access to untendered contract information has a comprehensive search engine. We also recommend that, in the interim, the PSB improve the search and reporting capabilities of the existing public access database so users can:

- search by date range and by all fields in the database
- extract large quantities of data
- display all outstanding contracts for a department at a specific time. **(section 3.2)**

Response to 11 and 12: Government acknowledges that the technological options for communicating information are evolving and will take these recommendations under consideration.

14. We recommend that the PSB improve guidance on the documentation for untendered procurement transactions in the PAM by clearly specifying which documents are mandatory and requiring reasons for waiving discretionary documents. **(section 4.1)**

Response: PSB will amend this requirement within the PAM.

15. We recommend that the PSB implement a risk based process to monitor department and SOA compliance with policies on the waiving of competitive bids (including the policy on public disclosure). We also recommend that the PSB report compliance issues to the departments' deputy minister. **(section 4.2)**

Response: PSB will work with the Treasury Board Secretariat to improve monitoring of compliance with policies and reporting of irregularities to deputy ministers.

18. We recommend that the PSB develop and implement a communication strategy to ensure that department and SOA officials know and understand the PAM requirements. **(section 4.3)**

Response: PSB conducts internal workshops aimed at educating departments across government on procurement. PSB also provides ongoing advice to clients through its knowledgeable staff on a day-to-day basis. PSB will continue to monitor the need for further communication and develop a strategy to ensure the necessary information is provided.

23. We recommend that the PSB develop and implement a plan to promptly complete the PAM. **(section 4.6)**

Response: PSB will develop a schedule and execution plan to complete outstanding items within the PAM. The PAM is a dynamic document that will continue to require ongoing amendments in response to changing business and regulatory environments.