



OFFICE OF THE
AUDITOR GENERAL
MANITOBA

Follow-up of Recommendations Waiving of Competitive Bids

November 2015

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Our vision

The Office of the Auditor General is an accessible, transparent and independent audit office, serving the Manitoba Legislature with the highest standard of professional excellence.

Our values

- Respect
- Honesty
- Integrity
- Openness

Our priorities

- Strengthen the management systems and practices of government organizations
- Provide Members of the Legislative Assembly with relevant information
- Manage our internal business effectively

Our critical success factors

- Independence from government
- Reliable audit opinions and conclusions
- Relevance of audit work performed
- Knowledge, skills and abilities of our staff



November 2015

The Honourable Daryl Reid
Speaker of the House
Room 244, Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

Dear Sir:

On October 5, 2015 the Public Accounts Committee issued the following resolution:

THAT the Standing Committee on Public Accounts recommend to the Auditor General that the Follow-up of Previously Issued Recommendations related to Chapter 10, Waiving of Competitive Bids in the March 2014 Annual Report to the Legislature, be released to the Legislature by or before November 13, 2015.

My Office worked diligently to accommodate this recommendation of the Public Accounts Committee.

It is an honour to provide you with my report titled: *Follow-up of Recommendations, Waiving of Competitive Bids*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of *The Auditor General Act*.

Respectfully submitted,

Original Document Signed by:

Norman Ricard

Norm Ricard, CPA, CA
Auditor General

Introduction

Our audit report on the Waiving of Competitive Bids was issued in March 2014. Our follow-up review of the implementation status of the 25 recommendations included in the report began in July 2015 when we requested a report from management on progress as at June 30, 2015. Our plan was to include this follow-up in our upcoming report on follow-up reviews scheduled for release in late-December 2015. However, at the October 5, 2015 Public Accounts Committee meeting, the Committee recommended through a resolution, that I release to the Legislature our follow-up report on the recommendations included in our 2014 Waiving of Competitive Bids audit report by November 13, 2015. We worked diligently to accommodate this recommendation.

Because of the heightened interest of the Committee in obtaining up-to-date progress information, we have extended the “as at” date to October 30, 2015.

What our original report examined

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

- 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.

This follow-up report should be reviewed in conjunction with our original report to obtain an understanding of the issues which underlie the recommendations. A copy of the 2014 report is available at our website: oag.mb.ca

Our follow-up review

Nature of a review

In conducting our recommendation follow-ups, we perform a review rather than an audit.

In a review, we provide a moderate level of assurance. Our review consists primarily of inquiry, analytical procedures and discussion related to information supplied. The evidence obtained through these procedures enables us to conclude on whether the matter is **plausible** in the circumstances. We do not re-perform audit procedures from the original audit.

In an audit, we provide a high, though not absolute, level of assurance. We achieve this high level of assurance by gathering sufficient appropriate audit evidence. Audit procedures would include: inspection, observation, enquiry, confirmation, analysis and discussion. Use of the term “high level of assurance” refers to the highest reasonable level of assurance auditors provide on a subject. Absolute assurance is not attainable because much of the evidence available to us is persuasive rather than conclusive, as well as, the inherent limitation of control systems, and the use of testing and professional judgment.

Follow-up of Recommendations – Waiving of Competitive Bids

Status categories

The implementation status of each recommendation is described using one of the following categories:

Implemented/resolved

The recommendation has been implemented or an alternate solution has been implemented that fully addresses the risk identified in the original report.

Action no longer required

The recommendation is no longer relevant due to changes in circumstances.

Do not intend to implement

Management does not intend to implement our recommendation or to otherwise address the risk identified in our original report.

Work in progress

Management is taking steps to implement our recommendation.

Our review comments

Our follow-up review was conducted in accordance with Canadian generally accepted standards for assurance engagements, and accordingly consisted primarily of inquiry, analytical procedures and discussion related to information supplied.

A review does not constitute an audit and consequently we do not express an opinion on these matters.

With respect to the implementation status, as at October 30, 2015, of the recommendations followed-up, nothing has come to our attention to cause us to believe that the representations made by entity management do not present fairly, in all significant respects, the progress made in implementing the recommendations.

Status of recommendations as at October 30, 2015

Our recommendations were directed to the Province, Treasury Board Secretariat, Department of Finance-Provincial Comptroller, Department of Infrastructure and Transportation-Procurement Services Branch, and the Vehicle and Equipment Management Agency. As a result of a government reorganization in June 2015, the Procurement Services Branch and the Vehicle and Equipment Management Agency are now part of the Department of Finance.

Summary of reports and PAC discussion dates	
Reports Issued	Discussed at PAC
Original report – March 2014	October 5, 2015

As shown in the table below, 8 of our 25 recommendations have been implemented as at October 30, 2015.

Follow-up of Recommendations – Waiving of Competitive Bids

Of the 17 recommendations that remain in progress, we note that significant progress has been made on 8 recommendations: 3, 4, 6, 8, 13, 15, 18, 23.

Review date <small>See Review comments</small>	Recommendations considered cleared			Work in progress	Total
	Implemented/ Resolved	Action no longer required	Do not intend to implement		
October 30, 2015	8	-	-	17	25

Below we list the recommendations that remain in progress and the recommendations considered cleared. For certain recommendations we have added an “OAG comment” to clarify implementation status, to highlight select actions or planned actions, or to identify opportunities to further enhance Department actions.

Work in progress

Directed to the Procurement Services Branch

We recommended that:

1. The Procurement Services Branch (PSB) assess whether procurement practices that departments and Special Operating Agencies (SOAs) use instead of obtaining competitive bids are reasonable.
 - If the PSB finds the practices are reasonable, we recommend it amend the Procurement Administration Manual (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.

***OAG comment:** PSB is in the process of identifying departmental practices. We note that the alternative procurement practices identified in our audit are included in this review.*

3. The PSB amend the PAM to require that departments make public their intent to award a contract over a set amount.

***OAG comment:** PSB has performed a jurisdictional review and is developing a process to provide public notice of the government’s intent to directly award a sole source contract over a set amount. A pilot of this process is scheduled to take place by December 21, 2015.*

6. The PSB update the PAM to require that departments and SOAs analyze and document how the price quoted on an untendered contract represents fair market value. The analysis should be conducted prior to contract signing.

***OAG comment:** PSB has developed a draft document entitled “Fair Market Value-Methodologies and Tools. This document outlines a process for determining fair and reasonable price (fair market value) when procuring goods and services without a competitive process.*

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Follow-up of Recommendations – Waiving of Competitive Bids

8. The PSB amend the PAM to require that contracts be kept in the public access database for as long as they are active.

OAG comment: All untendered contracts over \$1,000 included in the public access database are now (beginning October 2015) also posted on the PSB website in a pdf document. In addition, as of September 28, 2015, all contracts greater than \$10,000 are posted on the government’s website under “Proactive Disclosure” (see recommendation 11). PSB indicates that the contracts disclosed on these two sites will be posted indefinitely. We note that the PAM has not yet been amended to reflect these changes.

In addition to the information provided, we suggest that the information databases include service contract start and end dates. We also suggest that contracts be removed from the data base an appropriate number of years (for example 7 to 10 years) after expiry of the contract.

12. The PSB ensure its public internet access to untendered 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 data range and by all fields in the database.
- extract large quantities of data.
- display all outstanding contracts for a department at a specific time.

OAG comment: The new on line system for disclosing contracts greater than \$10,000 (see recommendation 11) organizes contracts by department and by month. For each selected month the contract information can be sorted by date, vendor, purpose, value or purchase category. The system, however, does not allow a user to query by vendor or date. To find a specific vendor, the user must know which department issued the contract they are looking for and in which month the contract was issued. To find all contracts issued to a specific vendor government wide, a user needs to go to each department’s page and then to each month. In our view, because of these limitations the new system does not have a “comprehensive search engine”.

We appreciate that building sophisticated search capabilities may have significant cost implications. Accepting that costs should be minimized, we encourage the PSB to explore how best to provide users with the ability to extract vendor focused contract information.

The pdf document posted to the PSB website which lists untendered contracts greater than \$1,000 can be searched by vendor using the pdf utility and can be downloaded to a spreadsheet for sorting by vendor.

14. 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.
15. 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 department's deputy minister.

OAG comment: PSB is in the process of finalizing its compliance review and reporting protocols for untendered contracts.

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

OAG comment: PSB has taken steps to improve communication of PAM requirements. PSB is finalizing communication tools on procurement policies and practices (for example, Governing Principles of Procurement document and a presentation on procurement excellence) and advises that it will be scheduling delivery of this communication.

Follow-up of Recommendations – Waiving of Competitive Bids

23. The PSB develop and implement a plan to promptly complete the PAM.

OAG comment: PSB has added a new section on Ethical Procurement and has amended various other sections. PSB notes that it is finalizing a Governing Principles of Procurement document and that this is the first step in a more comprehensive update of the PAM. Once the governing principles are approved, PSB advised that a detailed plan for updating the PAM will be prepared.

Directed to the Treasury Board Secretariat and the Province

4. 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.

OAG comment: Treasury Board Secretariat has completed a jurisdictional review of delegated authorities for untendered contracts during emergency events.

9. Treasury Board Secretariat amend the General Manual of Administration's (GMA's) definition of contract to match the Procurement Administration Manual definition.

13. The Province periodically review whether the threshold for the reporting of untendered contracts is consistent with its disclosure objectives and adjust it if necessary.

OAG comment: The Budget Implementation and Tax Statutes Amendment Act, 2015 (BITSA) has been proposed as a Bill. As of October 30, 2015, the Bill passed its first reading in the Legislative Assembly. Statutory amendments through BITSA 2015, will allow for the periodic adjustment of the threshold for the reporting of untendered contracts. Officials advise that they intend to subsequently increase the threshold to \$10,000. Once the regulation specifying the contract disclosure requirements is approved we will consider this recommendation implemented.

17. Treasury Board Secretariat develop an administrative policy development framework.

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

Directed to Departments and SOAs

16. Department executive financial officers randomly review higher-risk procurement transactions to ensure internal controls function properly.

20. All departments enforce the requirements 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.

OAG comment: PSB now requires purchase orders for all contracts greater than \$1,000 (with a few exceptions) to be entered into SAP and is currently monitoring the use of the Business Case Tab. At the time of our audit, use of SAP purchase orders was required for all purchases of goods over \$2,500 and services over \$5,000 yet significant purchases were still being made without purchase orders. In our view, to increase compliance, Executive Financial Officers will need to actively enforce purchase order use.

Follow-up of Recommendations – Waiving of Competitive Bids

25. Departments with Special Operating Agencies review and update the operating charters yearly.

***OAG comment:** Currently, the amendment of an SOA's Operating Charter requires approval by Order in Council. Included in BITSA is a provision that will allow the Minister of Finance to approve any changes to an SOA operating charter. This provision will simplify the amendment process. We note that current operating charters in use by some SOAs continue to contain references to General Manual of Administration sections that are out of date.*

Considered cleared

Implemented/resolved

Directed to the Procurement Services Branch

We recommended that:

2. 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.

***OAG comment:** Alternate solution implemented - In 2014, TBS began requiring that a Financial Overview Form be completed and signed by departmental Executive Financial Officers and that it accompany all Treasury Board submissions. This form contains a section on competitive procurement which must be completed when goods and services requiring TB approval are not competitively tendered. The section requires the documentation of consultations with PSB, including any related outcomes.*

7. The PSB amend the PAM to include the *Financial Administration Act* (FAA) disclosure requirement for contracts with uncertain values.

***OAG comment:** Alternate solution implemented - PSB now requires that purchase orders for contracts greater than \$1,000 (with a few exceptions) be entered into SAP. Doing this necessitates inputting a contract amount. SAP is used to generate the Proactive Disclosure Report on all contracts greater than \$10,000 and as such all contracts will contain a value.*

SAP is not being used to generate untendered contract reporting between \$1,000 and \$9,999.99. This information continues to be manually generated by departments but PSB now monitors these reports against information in SAP. As part of this review, PSB ensures that all contracts posted to LBIS contain a value. This manual process is required until the BITSA becomes law and the Financial Administration Act is amended to reflect the planned \$10,000 threshold.

10. The PSB amend the PAM to add disclosure requirements of untendered contracts in foreign currencies.
11. The PSB make public access to untendered contract information available on the internet.

***OAG comment:** As at September 2015, disclosure information on contracts greater than \$10,000 (included untendered contracts) is available on the government's website under "Proactive Disclosure". Beginning in October 2015, untendered contract information for contracts greater than \$1,000 is included on in a pdf document on PSB's website under "What we buy". We believe that a direct link on the Proactive Disclosure website to the pdf documents on the PSB website would be more user friendly.*

Follow-up of Recommendations – Waiving of Competitive Bids

Directed to the Department of Finance

19. The Department of Finance, consulting with Procurement Services Branch (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.

OAG comment: See our comment related to recommendation 7.

21. The Department of Finance amend the purchase category fields in SAP to include the acceptable circumstances for waiving competitive bids, from the Procurement Administration Manual.

OAG comment: The purchase category fields in SAP have been changed to reflect the changes to Chapter 9 of the PAM (SAP Procurement). As of the follow-up date, Chapter 13 (Contract Planning) of the PAM on Waiving of Competitive Bids has not been amended to ensure consistency between the “acceptable circumstances” for waiving competitive bids and the purchase category fields reflected in Chapter 9. As such, there is still a disconnect between SAP categories for purchases and Chapter 13 of the PAM.

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

Directed to Departments and SOAs

5. VEMA amend its policies to require the documentation of proper contract approvals (before payment).

Auditor General

Norm Ricard

Principal

Erika Thomas

Audit Manager

Jonathan Stoesz

Desktop Publisher

Shondell Babb

Cover design

Cocoon Branding Inc.

Our contact information

Office of the Auditor General
500 – 330 Portage Avenue
Winnipeg, Manitoba
Canada R3C 0C4

Phone: (204) 945-3790

Fax: (204) 945-2169

Email: contact@oag.mb.ca

Copies of this report can be found on our website www.oag.mb.ca



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