
MANAGEMENT BOARD SECRETARIAT AND MINISTRIES OF THE ENVIRONMENT, FINANCE, HEALTH AND LONG-TERM CARE, NATURAL RESOURCES, AND COMMUNITY SAFETY AND CORRECTIONAL SERVICES

4.06—Consulting Services

(Follow-up to VFM Section 3.06, *2002 Annual Report*)

BACKGROUND

Consulting services, as defined under the revised Management Board of Cabinet Procurement Directive for Consulting Services, are services provided for a fee, on the basis of a defined assignment, and relating to management consulting, information technology (IT) consulting, technical consulting, and research and development.

Over the five-year period from 1998 to 2002, there was a substantial increase in annual consulting services expenditures at Ontario ministries, from \$271 million in 1998 to \$662 million in 2002. Our audit of consulting services in 2002 encompassed work at the following six ministries (ministries): Management Board Secretariat (MBS), Environment, Finance, Health and Long-Term Care, Natural Resources, and Public Safety and Security (now the Ministry of Community Safety and Correctional Services). For the 2003/04 fiscal year, these ministries incurred \$232 million in consulting services expenditures (\$314 million in 2001/02).

In 2002 our audit concluded that, in many respects, consulting services were not acquired and managed with due regard for value for money. The following is a summary of our major concerns:

- There was a heavy dependence on the use of consultants. Hundreds of consultants were engaged at per diem rates that were on average two to three times higher than the salaries of ministry employees performing similar duties.
- The ministries often awarded short-term contracts to a consultant and then extended the term and ultimate cost of the contract with little or no change to the original deliverables.
- In the development of multi-million-dollar IT projects, the ministries often engaged consultants on a per diem basis to do the work instead of awarding the work based on an open tender. This lack of open tendering did not ensure that the most qualified consultants were acquired at the best available price and that all suppliers of consulting services were given fair access and treated in an open and transparent manner. In addition, by compensating consultants on a per diem basis and not on the basis of a fixed price and fixed deliverables, the ministries assumed the risk and

cost of consultants not delivering their work on time, even when such problems may have been caused by unsatisfactory performance and inefficiencies on the part of the consultants.

- There were significant weaknesses in controls over payments to consultants. We found many examples of payments to consultants that exceeded the ceiling price of contracts, where there was no evidence of prior approvals by the Deputy Minister or designate as required by the Directive. We also found instances where consultants' rates were permitted to increase significantly without documented rationale for these large increases.

We made a number of recommendations for improvement and received commitments from all the ministries that they would take corrective action.

CURRENT STATUS OF RECOMMENDATIONS

According to information received from Management Board Secretariat and the ministries we audited, substantial progress has been made to put in place more stringent controls over planning for, acquiring, and managing consulting services. The Management Board of Cabinet issued new and revised directives. In addition, ministries revised their internal policies and trained staff to comply with the new requirements. The Internal Audit Division at Management Board Secretariat initiated an audit of the acquisition and management of consulting services at seven large ministries, primarily to assess the extent of compliance with the new procurement directives. The audit commenced in April 2004 and was in process at the time of our follow-up.

Since our *2002 Annual Report*, progress has been made to reduce expenditures on consulting services; total annual expenditures by all ministries combined have decreased by approximately 19%, from \$662 million to \$537 million. Similarly, the total for the six ministries we audited in 2002 has decreased by over 25%, from \$314 million to \$232 million.

The current status of action on each of our recommendations is as follows.

DIRECTION TO MINISTRIES

Recommendation

In order for vendor-of-record arrangements to reflect a fair, open, and competitive procurement process that will ensure that ministries receive value for money, Management Board Secretariat (MBS) should ensure that:

- *guidelines are strengthened to clarify the process by which consultants are selected and that ministries are required to follow a formal selection process to give the qualified consultants on a vendor-of-record list equal opportunity to bid on government contracts;*
- *there is a documented rationale to support any departure from the competitive selection requirements of the Directive, authorization from Management Board of Cabinet is obtained for all departures, and the Directive is updated to reflect the requirements of vendor-of-record arrangements;*
- *its guidelines to ministries require that larger projects not be subdivided into smaller assignments to avoid competition and that ministries ensure that consultants assume responsibility for their work by requiring fixed deliverables at a firm price; and*
- *an improved process for collecting information on and monitoring ministry use of vendors of record is established.*

In addition, MBS should, whenever possible, obtain guarantees from consultants that their per diem rates are the lowest available to their major customers. The vendor-of-record list should indicate when these guarantees have not been obtained, in which case ministries should be permitted to negotiate for better rates.

Current Status

On April 25, 2003, Management Board Secretariat (MBS) issued revised Management Board of Cabinet (MBC) procurement directives for the acquisition of goods and services, consulting services, and information technology (IT). Provisions in each of these directives serve to strengthen requirements for engaging consulting services.

Included in the revised directives were specific policies and processes for the establishment and use of vendors of record, including specific rules that make the vendor-of-record selection process more competitive than it previously was. The directives set out the following new requirements:

- If there is only one vendor of record for the required goods and/or services, a ministry may select that vendor without having to undertake any further selection process.
- If the total estimated value of a contract is less than \$25,000, a ministry may either select one of the vendors of record or require competing vendors to submit bids or proposals for the ministry's consideration.
- If the total estimated value of a contract is between \$25,000 and \$249,999, a ministry must, if possible, invite at least three vendors of record to submit bids or proposals.

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- If the total estimated value of a contract is between \$250,000 and \$749,999, a ministry must, if possible, invite at least five vendors of record to submit bids or proposals.

Ministries must use a separate open competitive process in lieu of selecting a vendor of record for contracts with estimated values of over \$750,000. In addition, the former requirement that IT procurements estimated at \$1 million or more receive prior MBC approval has been expanded to include all procurements of goods and services.

Ministries must generate and retain appropriate documentation on: the selection process for goods and services acquired; the criteria used to determine which vendors of record are to be invited to submit bids or proposals (where applicable); and the criteria used to determine which vendor is to be awarded a contract. In the case of consulting services, all non-competitive acquisitions valued at \$25,000 or more require prior deputy head approval, while acquisitions valued at \$500,000 or more require prior MBC approval.

In December 2003, MBC approved an enhanced requirement for new IT projects whereby assignments must be based on fixed prices rather than per diem rates. Ministry staff must obtain the approval of both their chief information officer and their deputy minister to exempt themselves from this requirement.

The directives also impose strict requirements that limit the ability of ministries to expand the scope of a consulting assignment and to structure or subdivide a consulting assignment to avoid competition. These include enhanced oversight and approval procedures at the senior-management level. Such requirements are intended to ensure that ministries are careful in their planning for consulting assignments and are accurate in their costing of the proposed assignments.

MBS informed us that the new vendor-of-record arrangements for various IT consulting services include a new pricing methodology. The new methodology ensures that when vendors bid to be listed as vendors of record for a service, the highest qualified-vendor price accepted will not be more than 25% higher than the average of all the bids for that particular service. This price limit was developed to encourage lower vendor bid prices and should result in greater value for money when using vendors of record. In addition, all new IT projects using vendors of record contain clauses requiring that vendors provide “most-favoured-client” rates to ministries; in addition, vendors will have the option to further discount prices when responding to requests for services from ministries. Depending on their success, these IT vendor-of-record initiatives may be extended to the vendor-of-record arrangements for other types of consulting services.

CONCERNS RELATING TO THE USE OF CONSULTANTS AT MINISTRIES

Continuous Reliance on Consultants and Assignment Definition

Recommendation

To ensure that its requirements are met in the most economical manner, the ministries should comply with the requirements of the Management Board of Cabinet Directive on Consulting Services by:

- *clearly defining proposed assignments, which involves specifying tangible deliverables, time frames for completion, and related costs, preferably with fixed ceiling prices; and*
- *avoiding continuous reliance on consultants and, when appropriate, ensuring that a transfer of knowledge occurs from the consultant to staff.*

Justification for the Use of Consultants

Recommendation

To ensure that needed services are obtained in the most economical way possible, prior to hiring consultants the ministries should conduct a proper evaluation of available resources both within the ministries and in other ministries, document the results, assess alternatives to using consultants, and, where the services of consultants are considered necessary, justify the engagement of consultants.

Competitive Selection of Consultants

Recommendation

To ensure that consulting services are acquired at the best available price, the ministries should:

- *follow the competitive selection requirements of the Management Board of Cabinet Directive on Consulting Services and Management Board Secretariat;*
- *on the basis of its evaluation of the experience, qualifications, and submitted bids of all the consultants capable of completing the assignment to the satisfaction of the Ministry, select the highest-ranked consultant; and*
- *adequately document the selection process and retain the documentation for use in supporting its decisions.*

Current Status

The Management Board of Cabinet Directive on Consulting Services was revised and requirements are now set out in the Procurement Directive for Consulting Services as well as in two other procurement directives for acquiring goods and services and information technology, respectively. To address the above recommendations, new requirements were added to the procurement directives dealing with defining proposed assignments, ensuring transfer of knowledge to ministry staff where possible and appropriate, and documenting the results of evaluations of available resources. For instance, ministries are now prohibited from acquiring external consulting services when existing ministry resources are available for the assignment; if ministries determine they do need to use consulting services, they must document their prior consideration of the use of internal ministry resources. In addition, a firm agreement ceiling price that is tied to the vendor's supply and/or completion of tangible deliverables is required for all consulting service assignments.

The new procurement directives outline a mandatory process for competitively selecting consultants. Ministries may select only the highest-ranked submission that meets all mandatory requirements, must fully document the selection process, and must retain the documentation for a minimum of seven years.

The Shared Services Bureau of Management Board Secretariat (MBS) has developed a detailed checklist for engaging consulting services that is based on the new procurement directives. The checklist notes that each step in planning for a contract, procuring consulting services, managing consultants, and evaluating consultant performance should be properly documented and validated. Also, the checklist notes that ministries should create a business case to justify the hiring of consultants. The business case requires consideration of the extent to which the vendor will transfer knowledge to ministry staff, and the Ministry is expected to provide an explanation if the transfer is not to occur.

We were informed that MBS and all ministries have conducted training sessions for key staff on the policies and procedures required to be adhered to when engaging consultants. We were also informed that new materials, including the checklist, were developed to assist ministries in successfully implementing the requirements of the new procurement directives.

In December 2003, the Management Board of Cabinet approved a strategy for reducing Ontario Public Service reliance on consultants. The strategy provides a framework for ministries to review existing consultant expenditures and analyze, using a business case, how needed services should be delivered annually up to the 2005/06 fiscal year. Based on this analysis, the framework enables ministries to either convert consultant positions for ongoing work to full-time staff positions or to fully outsource the work.

In addition, MBS, as well as most of the ministries we audited in 2002, informed us that they had implemented processes for periodically sampling and assessing compliance with the requirements for consulting engagements.

An MBS Agreement with a Consultant

Recommendation

In order to properly monitor project progress, control project costs, and determine the extent to which deliverables are achieved, Management Board Secretariat should enter into a new or revised contract with a consultant whenever the scope and objectives of the consultant's original contract are revised, and the new or revised contract should reflect the changes in scope and/or objectives.

Current Status

Under the new procurement directives, whenever changes and/or additions to the terms and conditions for any agreement increase the original contract's ceiling price, the following must be documented and receive the prior approval of the deputy minister or the deputy minister's delegate: the changes and/or additions themselves; the method used to arrive at the revised ceiling price; and the reason why the need for changes and/or additions was not foreseen prior to signing the contract.

In addition, the prior written approvals of both the deputy minister and the minister are required before executing any change to an agreement that would cause the ceiling price to reach or exceed \$750,000. The prior approval of the Management Board of Cabinet is required before executing any change to an agreement that would cause the ceiling price to reach or exceed \$1 million.

We were advised that during training sessions at Management Board Secretariat (MBS), managers were reminded of the need to ensure that payments are only made based on the stipulated terms of the contract and in compliance with specific requirements of applicable directives. According to MBS, the training sessions also dealt with the requirements to be followed when agreements are changed, including the approval requirements described above.

Tax Compliance Forms

Recommendation

Prior to engaging the services of a consultant, the ministries should:

- *ensure that the consultant has submitted the required tax compliance declaration to confirm that the consultant is in good standing with the provincial tax authority; and*

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- *forward the tax compliance declarations to the Ministry of Finance to enable verification that every consultant who submits the tax compliance form is actually in compliance.*

Current Status

Under the three new procurement directives, the Ministry of Finance is required to verify a consultant's tax compliance prior to the award of a contract valued at \$25,000 or more. Commencing in April 2004, this verification process is to be done once a year for multi-year contracts. If a consultant's taxes are no longer in good standing, the Ministry of Finance has the option of deducting the taxes owing from the payment to be made by the contracting ministry.

We were advised that during training sessions held by ministries on the new procurement directives, managers were reminded that they need to both obtain a tax compliance declaration form from the consultant and receive a verification of the declaration from the Ministry of Finance before awarding a contract. The training also advised managers of the procedures required under the new procurement directives for filing the form with the Ministry of Finance and maintaining a copy on file for reference purposes. In addition, an MBS-developed checklist includes a reminder that each engaged consultant's tax compliance must be verified.

Controls over Payments to Consultants

Recommendation

To ensure that all payments to consultants are in accordance with valid contracts and made only for work performed, the ministries should:

- *ensure that approvals at the appropriate level are obtained for consulting service invoices submitted for payment;*
- *require that payments be made only when there is a valid contract in place; and*
- *monitor payments for adherence to the agreed-upon price in contracts and allow amounts in excess of the agreed-upon price only if those amounts are justified, formally agreed to, and accompanied by proper approval.*

Current Status

The following new mandatory requirements have been included in the three new procurement directives. These requirements are intended to ensure the effective and responsible management of consulting-service assignments.

- All payments must be in accordance with contractual provisions and go through appropriate approvals.

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- All payments for travel and general expenses must be in accordance with the Travel Management and General Expenses Directive applicable to ministry employees.
 - Any overpayment for fees or expenses must be recovered by ministries.
 - All required approvals must be obtained for all changes in scope and the terms and conditions of a contract.

We were informed that at all of the ministries where our *2002 Annual Report* identified significant weaknesses in financial controls over payments, the delegation of authority has been revised in order to ensure more stringent controls over payment approval. We were further informed that all ministries established a system to routinely verify that payments made are in accordance with the terms and conditions of the consulting contract.

Managing and Controlling the Use of Consultants

Recommendation

To help ensure that consulting services are acquired, managed, and controlled appropriately and economically, the ministries should establish an adequate system for maintaining management information on the use of and payments to consultants by the various program areas. The information should be used for monitoring the effectiveness of the use of consultants by the ministries and for identifying areas where management practices need to be improved.

Current Status

According to the three new procurement directives, ministries now must provide an annual report to Management Board Secretariat (MBS) on the planning, acquisition, and management of consulting services. The annual reports are to include the following information:

- a list and description of all the ministry consulting-service agreements that were in effect at any time during the fiscal year, with details on the estimated total agreement value used to determine the required levels of approvals, original and actual costs, and acquisition procedures used, as well as confirmation of deliverables received;
- all agreements for which an increase in ceiling price occurred;
- all follow agreements not tendered; and
- all agreements with a ceiling price over \$25,000 for which non-competitive acquisition procedures were used.

Ministries must also provide a review of the management practices used to comply with the principles of the new procurement directives, including a report on any problems encountered and corrective action taken to prevent a recurrence.

A consulting-services annual report template has been developed by MBS, and the first report for the 2003/04 fiscal year was due to MBS by May 31, 2004. We understand that, as of July 15, 2004, all ministries had submitted their report. We were also informed that the annual reports will be analyzed to identify if any additional action is required corporately or by ministries.

We were informed by all of the ministries we audited that they had made improvements to their financial and management systems to oversee and report on their consulting-service engagements.

In addition, the Internal Audit Division at MBS had initiated an audit of the acquisition and management of consulting services at seven large ministries, primarily to assess the extent of compliance to the new procurement directives. The audit commenced in April 2004 and was in process at the time of our follow-up.

Post-assignment Evaluations

Recommendation

To better ensure that value for money is received from consultants, the ministries should ensure that all major consulting projects are formally evaluated upon completion and that the results are documented for use in determining the suitability of the consultants for future work.

Current Status

The three new procurement directives include mandatory requirements for managing and documenting consultant performance and also require that any performance issues be resolved. In the case of multi-year contracts, this must be done at least annually during the term of the contract.

In addition, instructions for using vendors of record continue to include a requirement that ministries complete a performance evaluation for each consulting assignment and forward the evaluation to Management Board Secretariat (MBS) to help MBS better manage the vendor-of-record arrangement.

Furthermore, a checklist for ministries to use when engaging consultants notes that ministries should conduct a formal evaluation of all consulting projects. In addition, the template to be used in preparing annual reports on consulting services includes a requirement to report on the status of the deliverables for each project.

All of the ministries we audited in 2002 informed us that systems and procedures were in place or being worked on to ensure that a formal performance evaluation was done for each consulting project.

ONTARIO REALTY CORPORATION

Recommendation

The Ontario Realty Corporation (ORC) should ensure that justification for hiring communications consultants is documented. A needs analysis should include the costs and benefits of hiring the consultant and alternatives considered such as the use of ORC staff. In order to reduce costs, ORC should also attempt to lessen its dependency on communications consultants by performing as much work as possible in-house.

To ensure proper contract management with communications consultants, ORC should comply with the terms of the Advertising Review Board standing agreements that require that letters of agreement be entered into for each individual assignment. ORC should also ensure that, for each agreement, the project scope and deliverables are clearly defined in sufficient scope and detail to permit the effective management of the contracts and to ensure objectives have been met.

Invoices submitted by communications consultants should provide sufficient information to allow staff responsible for invoice approvals to determine whether the service has been rendered and that the amount invoiced is reasonable.

Current Status

According to the Ontario Realty Corporation, action has been taken to reduce its reliance on communications consultants, and most day-to-day communication is now being performed in-house.

We were informed that letters of agreement must now be in place for each individual assignment. We were also informed that the procurement policy has been revised to be consistent with the revised Management Board of Cabinet directives. The requirements cover planning, sourcing methods, and evaluation criteria. A standard agreement template that includes requirements for project terms, duration, and deliverables has been implemented.

In addition, a detailed description on work rendered is required for all invoices submitted by communications consultants.