



Contracting for Goods and Services

Northwest Territories



Office of the Auditor General of Canada
Bureau du vérificateur général du Canada

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Auditor General of Canada
Vérificatrice générale du Canada

The Honourable Paul Delorey
Speaker
Northwest Territories Legislative Assembly
P.O. Box 1320
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Dear Mr. Speaker:

I have the honour to transmit herewith my report on Contracting for Goods and Services—Northwest Territories to the Northwest Territories Legislative Assembly in accordance with the provision of section 30 of the *Northwest Territories Act*.

A handwritten signature in black ink that reads "Sheila Fraser".

Sheila Fraser, FCA
Auditor General of Canada

Ottawa, 2 June 2009

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Contracting for Goods and Services—Northwest Territories

Main Points

What we examined

The Government of the Northwest Territories (GNWT) frequently contracts with private sector individuals and organizations that can provide it with expertise or economies of scale it would otherwise not have access to. Using contracts helps the government deliver its programs and services effectively and efficiently to meet its objectives. Each department is largely responsible for its own procurement and contracting.

Using a random sample of 40 contracts from each of the three departments that account for the most contracting in the GNWT—Public Works and Services, Health and Social Services, and Transportation—we examined whether these departments can demonstrate that they award contracts for goods and services in an open and fair manner and administer contracts in accordance with applicable laws, regulations, and policies. We also assessed whether the GNWT has an adequate contracting framework and quality assurance process to help ensure that government departments and territorial corporations award and administer their contracts for goods and services in accordance with government policies and regulations.

Why it's important

Government departments spend an increasing amount each year on contracts over \$5,000 for goods and services. In the 2007–08 fiscal year, the total was \$163 million. The government's objectives for contracting are to acquire goods and services in a way that enhances suppliers' access to contracts, encourages competition, and reflects fairness, transparency, and probity in the spending of public funds. It is important that contracting be carried out in accordance with the policies and regulations designed to achieve those objectives.

What we found

- The GNWT's policy framework for contracting contains the elements that govern the procurement of goods and services. The policy framework is designed to ensure, if adhered to, that contracts are awarded in a fair, open, and transparent manner. However, the policy framework is currently missing some elements that would strengthen it—for example, an independent dispute resolution process for suppliers. In addition, the fact that

contracting policy and guidance are dispersed through many documents and sources makes it more difficult for government employees to be aware of all components of the contracting process.

- For the departments included in our audit, we noted that between 78 and 93 percent of contracts were awarded in a fair and open manner in accordance with the applicable laws, regulations, and policies. However, neither the government nor individual departments have yet established risk tolerance limits—maximum rates of error that can be accepted or tolerated in the contract award process. This makes it difficult for management to monitor whether tighter controls or additional training might be needed.
- In the administration of contracts after they are awarded, there were deficiencies or weaknesses of some kind in a majority of the contracts we audited. These included, for example, receiving goods or services before the contract was issued, not issuing contract change orders in accordance with GNWT policy, exceeding spending authority, and approving payments prior to obtaining the required certifications. Although no one single type of error was pervasive within or across departments, one or more of these types of errors was present in 57 percent of the contracts in our samples.

The GNWT needs to strengthen its quality assurance over its contracting management activities. While each of the departments we audited had some quality assurance activities, the results of this work were not summarized in a form that provided adequate information on the nature and frequency of errors identified—an important prerequisite for determining whether more training or stronger management processes are warranted.

***The departments have responded.** The Department of Finance, Comptroller General, and the departments of Public Works and Services, Health and Social Services, and Transportation agree with all of our recommendations. Detailed responses follow each recommendation throughout the report.*

Introduction

1. Contracting is an effective way for the Government of the Northwest Territories (GNWT) to obtain the expertise or resources it needs to support the delivery of its programs.
2. The government’s contracting policy framework is intended to provide guidance to departments on contracting for goods and services. The various laws, regulations, and policies that apply to the contracting process are intended to ensure that contracts are awarded in a fair, open, and transparent manner. The government’s Business Incentive Policy provides a preferential cost advantage to businesses registered in the Northwest Territories.
3. Although the GNWT’s departments are responsible for their own contracting for goods and services, they can seek advice from the departments of Public Works and Services and Justice on any contracting matter. An office within the Department of Industry, Tourism and Investment administers the Contract Registry and Reporting System, which lists all competitive and non-competitive contracts over \$5,000 awarded by the GNWT. Exhibit 1 describes the key roles and responsibilities for contracting within the GNWT.
4. During the 2007–08 fiscal year, GNWT departments spent \$163 million on 1,782 contracts with a value of more than 5,000. Sixty-six percent of these contracts were awarded through a competitive process. The remaining 34 percent were awarded non-competitively.

Exhibit 1 Roles and responsibilities for contracting for goods and services

Name of entity	Description of responsibilities
Department of Finance	Sets contracting policy through its Financial Administration Manual
Department of Public Works and Services	Provides advice and guidance to other government departments on the procurement of goods and services
Department of Justice	<ul style="list-style-type: none"> • Authorizes all non-standardized contracts worth more than \$50,000 • Acts as the contract authority for all legal services contracts, except when such a contract is for the benefit of a child who is in the care of the Director of Family and Social Services and who has been charged with an offence
Department of Industry, Tourism and Investment (Manager of Procurement Policy)	<ul style="list-style-type: none"> • Administers the Contract Registry and Reporting System • Administers the Business Incentive Policy

Focus of the Audit

5. We reviewed the GNWT's contracting policy framework to determine if it is designed to help ensure that contracts for goods and services are awarded in an open and fair manner and are administered in accordance with applicable laws, regulations, and policies.
6. To assess the way contracts are awarded and administered, we selected a random sample of 40 contracts from each of three departments—Public Works and Services, Health and Social Services, and Transportation—for the 2007–08 fiscal year. These three departments accounted for 77 percent of the total dollar value and 45 percent of the total number of contracts in excess of \$5,000 for goods and services issued by GNWT departments during the 2007–08 fiscal year.
7. We examined whether these departments could demonstrate that contracts for goods and services had been awarded in a fair, open, and transparent manner in accordance with GNWT policies. As well, we assessed whether these departments could demonstrate that they were administering contracts for goods and services in accordance with the applicable laws, regulations, and policies.
8. As a final step, we examined whether the departments had a quality assurance process in place to monitor whether individual government departments and entities are complying with the applicable laws, regulations, and policies for contracting for goods and services.
9. More details on the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this report.

Observations and Recommendations

Contracting policy framework

10. We reviewed the policy framework that governs the awarding and administration of contracts by the Government of the Northwest Territories (GNWT). A contracting policy framework is designed to ensure that contracts for goods and services are awarded in an open and fair manner and administered in accordance with the applicable laws, regulations, and policies. Such a framework is also designed to ensure that government staff clearly understand their roles and responsibilities.

The contracting policy framework provides appropriate direction and guidance but needs updating and consolidating

11. The GNWT's contracting policy framework consists of the *Financial Administration Act (FAA)*, the Government Contract Regulations, the Financial Administration Manual–Procurement and Contract Administration, the Business Incentive Policy, the Negotiated Contracts Policy, and the Agreement on Internal Trade.

12. We examined the GNWT's contracting policy framework to determine whether it addresses all aspects of awarding and administering contracts, and whether it provides clear guidance to government employees.

13. We found that the GNWT contracting policy framework contains the important elements required to procure goods and services in an open and fair manner and to properly administer contracts. In particular, we found that

- policy guidelines are in place that cover a contract authority's responsibilities for issuing an invitation to tender or a request for proposals (RFP);
- policy statements cover the issuing of negotiated contracts;
- the Government Contract Regulations make it clear that only a contract authority can enter into a contract on behalf of the government;
- the circumstances under which a contract change order can be issued are covered in the Financial Administration Manual—Procurement and Contract Administration; and
- the *Financial Administration Act* provides guidance on the responsibilities of expenditure officers and accounting officers for initiating and committing expenditures and for authorizing payments to suppliers. The Act also requires an appropriate separation of duties between expenditure officers and accounting officers in initiating and paying for a transaction.

14. However, we also noted areas where the policy framework could be strengthened. Specifically, we noted that the policy governing contract change orders does not specify that a change order should be approved by the contract authority, as required by the Government Contract Regulations, and that the GNWT contracting policy framework does not provide suppliers with an independent contract dispute process.

15. At present, the direction and guidance that government employees need in order to award and administer a contract are dispersed through many documents and sources. This makes it more difficult for government employees to be aware of all components of the contracting process and to have an easily accessible document that provides guidance on the contracting process.

16. **Recommendation.** The Government of the Northwest Territories (GNWT) should update and improve the accessibility and availability of its policy and guidance on contracting to make it easier for GNWT staff to use.

***The Government’s response.** Agreed. The policy guidance on contracting for the Government of the Northwest Territories (GNWT) currently rests in the Government Contract Regulations and within sections of the Financial Administration Manual (FAM). The current arrangement does not concisely consolidate the rules for contracting into a single guide or source. Doing so would assist employees in ensuring that they were meeting the requirements as established by the GNWT. In addition, the implementation of a new financial system will assist in standardizing some of the business processes associated with contracting for goods and services.*

Delegation of authority

17. We looked to see if the three departments included in our audit had established clear delegations of authority in accordance with Government of the Northwest Territories (GNWT) legislation for managing and carrying out the contracting process. Specifically, we looked to see if a contract authority, and expenditure officers and accounting officers, had been properly delegated in accordance with GNWT legislative requirements.

Departments’ delegations of authority require additional measures to meet legislative requirements

18. The power to act on behalf of the government resides with the minister of a particular department. As it is not practical for ministers to initiate all the transactions for their departments, certain authorities are delegated to departmental officials. It is an essential principle that those who have a delegated authority must only act within the scope of that authority. If there is no delegation from the minister, there is no authority to act.

19. In accordance with the *Financial Administration Act* (FAA), a minister may delegate his or her powers to designated expenditure officers and accounting officers, to a deputy minister, or to other public officers. In addition, section 5 of the Government Contract Regulations provides that a minister or deputy minister may delegate his powers and duties as a contract authority.

20. In order to properly initiate, execute, and pay a contract, the FAA requires three distinct delegations of powers and duties:

- a contract authority who is authorized to initiate a contract,
- an expenditure officer who is responsible for monitoring and confirming that contract performance and price are in accordance with the terms and conditions of the contract, and
- an accounting officer who is responsible for approving payment.

21. We reviewed the delegations of authority established by each of the three departments included in our audit to determine whether they had been properly executed. We noted that in some instances the delegations of authorities had been properly executed; in other instances they had not.

22. **Delegated contract authority.** Specifically, we noted that in two departments, Health and Social Services and Transportation, contract authorities were properly delegated. Public Works and Services could not provide documentation to demonstrate that either the minister or the deputy minister had delegated contract authority to anyone in that department. As a consequence, all contracts entered into by the department that were not signed by either the minister or the deputy minister contravened the Government Contract Regulations. While Public Works and Services has established specimen signature cards for various positions with contract authority in the department, this process has not met the requirements of the GNWT legislation. As a consequence, within Public Works and Services only the minister and deputy minister had properly delegated contract authority.

23. **Delegation of accounting officers and expenditure officers.** Under subsection 40(1) of the FAA, the minister is required to designate public office holders as accounting officers and expenditure officers for the department. In order for these officers to be designated by the deputy minister, the minister must delegate that power to the deputy minister. In the absence of such a delegation from the minister, the FAA's requirements have not been met. In all three departments, we noted that the deputy ministers had designated public officers as expenditure officers and accounting officers and established a system of specimen signature cards indicating programs for which various officials had signing authority. We noted, however, that there was no evidence that the responsible ministers had delegated such authority to the deputy ministers to permit these subdelegations.

24. We found that no one other than ministers were properly delegated as expenditure officers and accounting officers, who are the only individuals who can spend money on contracts or certify that the terms and conditions of contracts had been adhered to and authorize payment. Therefore, payments made against these contracts were not properly authorized.

25. **Recommendation.** The Department of Finance should reinforce and increase awareness of the requirements for delegation of contract authorities and enhance monitoring to ensure that such delegations are being made in accordance with applicable laws, regulations, and Government of the Northwest Territories (GNWT) policies.

The Government's response. Agreed. *Financial Administration Manual (FAM) sections 1801 and 1802 outline the authorities and requirements*

related to the delegation of powers. There is a need to reinforce these requirements through increased awareness within departments and monitoring by the Office of the Comptroller General. Steps are under way to ensure that authorities are consistently delegated from ministers to deputy ministers. As part of the implementation of the new financial system process, FAM 1801 and 1802 will be revised to clarify the requirements associated with delegation of authority as well as to reinforce the monitoring mechanisms of the Comptroller General.

The government needs to further strengthen its dispute resolution process for suppliers

26. As part of our audit, we reviewed the mechanisms established by the Government of the Northwest Territories (GNWT) and its departments to resolve conflicts, if any, which may arise during the contracting process. We expected that the GNWT contracting policy would explicitly require departments to have established mechanisms to resolve conflicts between bidders and government departments.

27. We also expected that the GNWT would have established an independent dispute resolution mechanism as required by articles 512 and 513 of the Agreement on Internal Trade. These sections of the Agreement require, respectively, that governments establish a point of contact to receive and review any complaint from a supplier about a contract and processes for determining whether to act on the supplier's behalf.

28. We noted that each of the departments included in our audit has established mechanisms and procedures to address issues or concerns that bidders or potential suppliers may raise during or after the contract award process. These processes include the naming of a designated procurement contact to whom a complainant may address concerns, and a way to elevate their concerns to the department's Director of Finance if their concerns have not been resolved in the first instance. GNWT policy also provides mechanisms for elevating complaints to the Comptroller General if they are not resolved at the departmental level. The way complaints and disputes are resolved during this phase are subject to the terms and conditions of the contract and could include conciliation, arbitration, or legal procedures.

29. Complainants may also use provisions for dispute resolution contained in the Agreement on Internal Trade. We noted that the GNWT has not established a clear process for complying with the requirements of the Agreement on Internal Trade. An independent dispute resolution mechanism for suppliers who feel that a contract has been awarded unfairly is an effective control to help ensure that contracts are awarded openly and fairly and that both parties are fulfilling their responsibilities under the contract.

30. Recommendation. The Department of Finance should implement an independent contract dispute resolution mechanism, as required by the Agreement on Internal Trade, that will have the ability to address complaints not resolved through existing departmental processes.

The Government's response. Agreed. The Government of the Northwest Territories is a signatory to the Agreement on Internal Trade. Procurement documents will be modified to identify that contact point, as required under Article 513 (Complaint Procedures—Provinces), for filing disputes related to the application of the Agreement on Internal Trade.

Awarding of contracts

31. We examined the awarding of contracts for goods and services from our selection of 120 contracts (40 contracts from each department) in the 2007–08 fiscal year.

32. We tested whether the contracts were awarded in accordance with the *Financial Administration Act*, the Government Contract Regulations, the Agreement on Internal Trade, the Business Incentive Policy, and the Financial Administration Manual—Procurement and Contract Administration.

33. It is important that contracts for goods and services be awarded in accordance with the applicable laws, regulations, and policies so that departments can demonstrate that they have awarded the contracts in an open and fair manner.

34. We tested whether the following key steps in the procurement process were properly carried out:

- The statement of requirements was defined by the department before bids were solicited and contracts let.
- The contract requirements, including environmental considerations where applicable, were provided in sufficient detail to allow potential suppliers to understand the government's requirements.
- The contract was advertised publicly if it was subject to competitive bidding.
- If a request for proposal (RFP) approach was used, the evaluation process and the evaluation criteria were explained clearly.
- The procurement strategy complied with the Business Incentive Policy, the Agreement on Internal Trade, and any other applicable agreements.
- The Government of the Northwest Territories (GNWT) was able to demonstrate that responses to RFPs were evaluated according to the predetermined and published evaluation criteria.
- The bid met all the mandatory requirements for the contract.

35. In addition, if the contract was sole-sourced or negotiated, we looked to see if the rationale for doing this complied with the GNWT's policy and was sufficiently documented and appropriately approved.

36. Whenever a contract failed to meet one of the criteria, we concluded that the contract was not awarded fairly.

Most sole-source contracts were awarded in accordance with contracting regulations

37. Whenever possible, contracts for goods and services are to be awarded using a competitive process. Sometimes, situations exist where a competitive process is not possible or does not represent the best value to the government. When a department chooses to use a non-competitive (sole-source) process, the contract authority is required by government policy to explain and justify this decision.

38. The Government Contract Regulations allow the contract authority to award a contract without a competitive process based on one of three well-defined exceptions:

- the performance of the contract is urgently required and delay would be injurious to the public interest;
- only one party is available and capable of performing the contract; or
- the contract will not exceed a total of \$5,000 or, in the case of consulting or legal services, the contract will not exceed a total of \$25,000.

39. The Agreement on Internal Trade also contains provisions that permit the awarding of contracts without a competitive process.

40. Our selection of 120 contracts contained 53 sole-source contracts valued at \$14.1 million. Of these, 17 were awarded by Public Works and Services, 20 by Health and Social Services, and 16 by Transportation. We examined these contracts to determine if they were awarded in compliance with relevant legislation, regulations, and policies. The awarding of a sole-source contract should fit one of the three exemptions from the Government Contract Regulations, and the justification should be documented and approved by the contract authority. Sole-source contracts should also comply with any applicable requirements of the Business Incentive Policy and the Agreement on Internal Trade.

41. We determined that most sole-source contracts were issued in accordance with the requirements of the Government Contract Regulations:

- Public Works and Services awarded 12 of 17 contracts (71 percent) properly.

- Health and Social Services awarded 17 of 20 contracts (85 percent) properly.
- Transportation awarded 14 of 16 contracts (88 percent) properly.

42. In each of these cases, we were able to conclude that the department had justified the use of a sole-source contract. We noted that departmental records demonstrated that these sole-source contracts had been awarded in accordance with GNWT policies.

43. For the 10 contracts that were not properly awarded, departments could not demonstrate that the circumstances met at least one of the criteria under which government policy allows the awarding of a contract on a sole-source basis. For example:

- Public Works and Services renewed a consulting contract for an annual value of \$60,000 for two years without a competitive tender and without documentation on file to demonstrate that the contractor was the only one capable of performing the work.
- Health and Social Services could not demonstrate that only one contractor was available or capable of administering three medical benefits programs. The value of the three contracts totalled \$5.5 million, most of which pertained to payment of medical benefits, and a small portion that related to an administration fee paid to the service provider.
- Transportation purchased a portable bridge for \$48,000. It had initially leased the bridge from the same contractor and did not enter into an open competitive process with other suppliers of portable bridges before making the purchase.

Most competitive contracts were awarded in accordance with contracting regulations

44. GNWT policy requires that contracts for goods and services be awarded using a competitive process except where one of the three defined exceptions for a sole-source contract is met. Our selection of 120 contracts contained 67 competitive contracts valued at \$11.4 million. Of these, 23 were awarded by Public Works and Services, 20 by Health and Social Services, and 24 by Transportation. Of the 67 competitive contracts, 20 were awarded in response to a request for proposal (RFP) and 47 were awarded through a competitive tendering process. We examined these contracts to determine if they were awarded in compliance with relevant legislation, regulations, and policies.

45. We determined that most competitive contracts were issued in accordance with the requirements of the Government Contract Regulations. Specifically we noted that

- Public Works and Services awarded 19 of 23 contracts (83 percent) properly,
- Health and Social Services awarded 15 of 20 contracts (75 percent) properly, and
- Transportation awarded 23 of 24 contracts (96 percent) properly.

46. Where competitive contracts were not properly awarded, the errors we noted were generally related to either

- contractual requirements that were not clearly defined and approved, or
- proposals that were not properly evaluated.

47. **Contract requirements.** We further examined the 67 competitive contracts awarded in the three departments (23 in Public Works and Services, 20 in Health and Social Services, and 24 in Transportation) to determine whether the statements of requirements were clearly defined and contained sufficient detail before bids were solicited and contracts let. Establishing clear requirements prior to entering into competitive and non-competitive contracts is an important step in the procurement process. It helps to ensure that contracts are awarded in an open and fair manner to contractors with the required skills.

48. We expected that, in accordance with GNWT policy requirements, the departments would have approved the contractual requirements in sufficient detail to allow prospective bidders to understand the nature and extent of the work to be performed under the contract. We also expected that the requirements would be advertised to ensure that all potential bidders had the opportunity to bid on the government's requirements.

49. We determined that both Health and Social Services and Transportation had developed the requirements in sufficient detail and obtained management's approval prior to soliciting bids or awarding contracts for each of the competitive contracts included in our sample.

50. In Public Works and Services, we noted that 22 of the 23 competitive contracts we examined were developed in sufficient detail and approved before the department sought bids or awarded contracts. In the single case where this did not occur, the contract requirements were too specific and thus limited the competitive process so that only one bidder responded to the request.

51. **Evaluation of proposals.** The GNWT policy requires proposals to be evaluated according to a predetermined formula. The formula

includes price and at least one other criterion, such as relevant experience or availability to carry out the work within the time frame specified in the RFP. Adhering to a clearly established process for evaluating bids is an important step in ensuring that proposals are evaluated and awarded in an open and fair manner.

52. Of the 67 competitive contracts we examined, 20 were awarded based on RFPs. Of these, 7 came from Public Works and Services, 11 came from Health and Social Services, and 2 came from Transportation.

53. As part of our audit, we examined the processes used by the departments to evaluate the proposals they received as a result of RFPs. We found that Public Works and Services had properly evaluated proposals in 5 of 7 instances, Health and Social Services in 7 of 11 instances, and Transportation in both of its instances. This resulted in a fair and open awarding of contracts based on GNWT policies.

54. For the six contracts where bids were not properly evaluated, we noted, for example, that Health and Social Services was unable to provide us with documentation to support the evaluations made by the evaluation team on four legal services contracts. In our view, the absence of adequate documentation to support the factors considered by the evaluation team in determining their ratings severely limited the department's ability to demonstrate that it awarded these contracts in an open and fair manner.

Administration of contracts

55. In the administration of contracts, basic controls should include, among other things, certifying that funds are available before entering into a contract, delaying the start of work or receipt of goods until after a contract is issued, ensuring that spending authority is not exceeded, and approving payments only when there is evidence that the goods or services have been received in accordance with the contract terms.

Departments contravene basic controls in their administration of contracts

56. We examined the way goods and services contracts were administered for 120 contracts (40 contracts selected from each of three departments) during the 2007–08 fiscal year.

57. We tested basic controls that are essential for the proper administration of contracts. Whenever a contract failed to meet one of the expected criteria, we concluded that the contract was not being administered in compliance with applicable laws, regulations, and policies. Our review showed that most contracts in our sample were not properly administered in accordance with GNWT requirements.

58. The errors we noted generally related to one or more of the following:

- Contract and change orders did not appear in the Contract Registry and Reporting System.
- Contracts were awarded without confirmation that sufficient funds were available.
- Work began before a contract was issued.
- Change orders were not issued as required.
- Payments were made to contractors before receipt of goods or services was certified.

59. **Posting of contract and change orders.** GNWT policy requires that the details of all contract awards and change orders be posted on the GNWT's Contract Registry and Reporting System, a public database containing information on all competitive and non-competitive contracts over \$5,000. The purpose of the Contract Registry is to enhance the government's ability to collect, monitor, evaluate, and report on its procurement activities. The registry also provides for accountability and transparency in government contracting in accordance with the public interest and in compliance with requirements of the Agreement on Internal Trade.

60. We reviewed the Contract Registry for all 120 contracts and any subsequent change orders to them. We noted that each of the initial contract awards was posted as required in the Contract Registry. Of the 120 contracts included in our audit, 23 of them had an amendment. For 5 of the amendments, we noted that the required details of contract change orders had not been reported. The most significant omissions were 3 change orders for \$216,000 for additional legal services (increasing the value of the contract by 292 percent).

61. **Confirmation of sufficient funds.** An important element of sound management is to ensure that sufficient uncommitted funds exist in an approved budget to cover the amount of a contract. This requirement is set out in subsection 44(1) of the *Financial Administration Act* (FAA), which states that no contract should be entered into unless both an expenditure officer and an accounting officer certify that there is a sufficient uncommitted balance for the activity.

62. We assessed whether departmental expenditure officers and accounting officers had approved the contract summary and commitment form before entering into a contract.

63. We noted that, in a majority of cases, the necessary approvals and commitments were in place prior to entering into the contract. However, in 32 of 120 contracts in our samples (12 from Public Works and Services, 7 from Health and Social Services, and 13 from

Transportation), the contract summary and commitment form was not approved until after the contract had been entered into. While departmental officials indicated that they did check to see if sufficient funds were available prior to issuance of the contract, the documentation on file does not demonstrate that this occurred. In such circumstances, the departments increase the risk of spending more than their approved budgets.

64. Start date of work. Having a contract in place before work begins is an important legal protection designed to help ensure that the terms and conditions of the work (providing goods or services) are agreed upon. We looked at whether departments had established internal controls to ensure that a contract was issued before the delivery of goods or services began.

65. In two departments, Public Works and Services and Transportation, we found that most contracts had been entered into before work began, in accordance with the government's policies. Specifically, we found the following:

- At Public Works and Services, 31 of 40 contracts were awarded before work began.
- At Transportation, 32 of 40 contracts were awarded before work began.

66. At Health and Social Services, we noted that only 16 of the 40 contracts we examined were awarded before work began. Of the 24 contracts where work began before the contracts were signed, 10 related to sole-source specialized care contracts that were up for renewal. Although management had decided to renew these contracts, Health and Social Services should improve its processes to ensure that contracts are renewed before they end. In our opinion, given that the renewal dates were well known, appropriate planning could have avoided this situation.

67. Departmental practices that do not prevent work from commencing before the contract is awarded increase the risk that contractors may not meet all the contract terms and conditions and the departments may not receive the goods and services they need to effectively deliver their programs.

68. Change orders. GNWT policy requires that change orders be issued only under special circumstances to change a contract price or other material aspects of the contract during the life of a contract. The change order should clearly state why the change is necessary. However, in accordance with government policy, a change order should not increase the scope of the contract, and the contract value, including the amendment, must not exceed the monetary limits of the financial signing officer's authority.

69. We reviewed departmental records to determine whether contract change orders complied with the government's contracting policies. We found that, in a majority of cases, no changes had been made to the original scope of work and that contract price increases were approved in accordance with the government's contracting policies.

70. Of the 120 contracts included in our samples, 23 of them include a change order: 6 at Public Works and Services, 8 at Transportation, and 9 at Health and Social Services. Of these 23 contracts, we noted 14 instances where the change orders had not been issued in accordance with GNWT policy: 2 at Public Works and Services, 9 at Transportation, and 3 at Health and Social Services.

71. The deficiencies in approving changes that we noted included instances where

- program managers provided verbal approvals but did not place supporting documentation on file,
- the amendments approved exceeded the delegated authority of the individuals authorizing the change, or
- payments exceeded the contract limit without a change order having been approved.

72. One of the instances we noted at Transportation related to a highway contract that was originally awarded for \$66,140. We noted that additional work orders for \$258,608 increased the scope of the original contract. In our view, given the significant change in the contract's scope and value, the Department should have awarded the additional work through a competitive process. We also noted that in this transaction only \$100,000 of the \$258,608 in additional payments was approved by a change order.

73. Failure by departments to comply with government contracting policy requirements related to change orders puts the GNWT at risk of exceeding the approved scope and price limits of a contract.

74. **Payments before certification.** The FAA requires that, before payments are made to a contractor, an expenditure officer must certify that the goods or services were supplied or rendered in accordance with the terms and conditions of the contract. Subsequently, an accounting officer must certify that the amount of the payment is accurate and that the payment should be made. Payments should not be made to contractors until both the expenditure officer and the accounting officer have signed and dated, or certified, the cheque requisition form.

75. We looked at departmental practices for paying contractors. We found that in the majority of cases in our sample, both expenditure officers and accounting officers had approved the receipt of the goods

or services and authorized payments in accordance with the government's requirements.

76. However, for 13 contracts we examined, we found that payments had been made without one or more of the required approvals. This included cases where the amounts approved exceeded the monetary signing authority of either the expenditure officer or the accounting officer and cases where either the expenditure officer or the accounting officer was unable to demonstrate that goods or services had been received before payment was approved.

77. Departments of the Government of the Northwest Territories that make payments to contractors before obtaining the required certifications increase the risk that they may be paying for goods that have not been received or for services that have not been rendered.

78. Recommendation. Departments should strengthen their processes and practices to ensure that all contracts for goods and services are administered in accordance with applicable laws, regulations, and policies.

The Government's response. Agreed. Management believes that better communication of those requirements through a more concise set of rules (as addressed under a previous recommendation) as well as increased monitoring of delegation of authorities will increase compliance with existing laws, regulations, and policies. Increased training and orientation for procurement staff and managers engaged in competitive purchasing will be considered.

Quality assurance process

79. It is important that a quality assurance process be in place to monitor whether departments are awarding contracts in an open and fair manner and properly administering contracts in accordance with contracting policies and regulations. This is particularly important in the Government of the Northwest Territories (GNWT) as all departments are responsible for their own contracting.

80. An effective quality assurance process serves two key purposes. The first is to provide feedback to individual contracting officers on areas where they may improve and the second is to provide management with overall information on the types of errors observed during the quality assurance process and the frequency with which they occur.

81. In this respect, it is important that management has established risk tolerance limits—maximum rates of error—which it will accept or tolerate. Risk tolerances establish a reference point against which management can monitor actual performance. If error rates are above management's tolerance limits, this serves as a catalyst for additional training or signals the need to tighten controls over the business process.

The quality assurance process for contracting needs strengthening

82. The departments of Public Works and Services, Health and Social Services, and Transportation all have a central contracting unit. The units told us they review many, or, in some cases, all of the contracts issued by their departments. We noted that the way departments use the results of this quality assurance varies. In some instances, the results of quality assurance reviews are provided to contracting officers to serve as lessons learned. We noted, however, that the departments we sampled did not formally summarize the results of these reviews so that they could determine where corrective action might be needed within a department or across government. In the absence of such reports and given the large number of discrepancies we found, the departments could not demonstrate that contracts had been awarded and administered appropriately or that problems had been identified and corrected. The management control represented by the contracting units' reviews is not sufficient in itself to provide the GNWT with assurance that departments have complied with GNWT laws, regulations, and policies.

83. We met with the Comptroller General, the Director of the Audit Bureau, and other government officials to determine whether the extent of monitoring and evaluation procedures performed by their units is sufficient to enable them to provide overall assurance of the quality of contracting activities in the GNWT. They told us that although their units play an important role in the government contracting process, they did not think their monitoring and evaluation procedures provided sufficient coverage of departments and territorial corporations to constitute overall assurance about GNWT contracting activities. We agree with that assessment.

84. As part of our audit, we asked whether the GNWT or individual departments included in our audit had established risk tolerances—or maximum error rates—that they considered to be within an acceptable range. Having such risk tolerances is important because should error rates exceed the established tolerances, the government or departments would have an impetus to strengthen controls on business processes. We were told that such targets had not been established.

85. Recommendation. The Comptroller General and the departments of Public Works and Services, Health and Social Services, and Transportation should strengthen their quality assurance processes that monitor adherence to applicable laws, regulations, and policies in the awarding and administration of contracts. This strengthening should include the establishment of risk tolerances against which actual performance can be measured.

The Government's response. Agreed. Increased emphasis on monitoring and quality assurance is necessary to reduce the risk of non-compliance in the administration of contracts. A review of authorities and responsibilities will be undertaken to ensure that appropriate mechanisms are in place and assess the resource requirements necessary to strengthen monitoring and quality assurance processes.

Conclusion

86. The Government of the Northwest Territories (GNWT) has been able to demonstrate that it has a policy framework that contains the elements that govern the procurement of goods and services. The policy framework is designed to ensure that, if adhered to, contracts are awarded in a fair, open, and transparent manner. We noted opportunities to further strengthen the policy framework through the addition of an independent dispute resolution mechanism, and to improve the accessibility and availability of its policy guidance.

87. For the departments included in our audit, we noted that in the three departments we looked at, between 78 and 93 percent of contracts were awarded in a fair and open manner in accordance with the applicable laws, regulations, and policies. We also noted that neither the government nor individual departments have yet established expected levels of performance for the contract award process as a whole. As a consequence, the departments were unable to demonstrate whether they were meeting established tolerance limits within the GNWT for the awarding of contracts for goods and services in an open and fair manner in accordance with the applicable laws, regulations, and policies.

88. In the administration of contracts after they are awarded, we found deficiencies or weaknesses of some kind in a majority of the contracts we audited. These included, for example, not certifying that funds were available before entering into a contract, receiving goods or services before the contract was issued, not issuing contract change orders in accordance with GNWT policy, exceeding spending authority, and approving payments prior to obtaining the required certifications. Although no one single type of error was pervasive within or across departments, we noted that one or more of these types of errors were present in 57 percent of the contracts in our samples. Consequently, we concluded that the departments included in our audit could not demonstrate that they administer contracts in accordance with government requirements.

89. The GNWT needs to strengthen quality assurance over its contracting management activities. We noted that each of the departments we audited had some quality assurance activities,

although the results of this work were not summarized in a manner that would allow management to track the nature and frequency of errors noted or to serve as a catalyst for more training or stronger controls, where warranted. We concluded that the GNWT was not able to demonstrate that it has adequate quality assurance for its contracting activities.

About the Audit

All of the audit work in this report was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

Objective

The objective of this audit was to determine whether the Government of the Northwest Territories (GNWT) can demonstrate that it is awarding and administering contracts for goods and services in an open and fair manner and properly administering the contracts in accordance with the established authorities. To satisfy this objective, we assessed whether

- the GNWT's contracting policy framework is designed to ensure that contracts for goods and services are awarded in an open and fair manner and administered properly in accordance with applicable laws, regulations, and policies;
- the departments of Public Works and Services, Health and Social Services, and Transportation can demonstrate that they are awarding contracts for goods and services in an open and fair manner and in accordance with the applicable laws, regulations, and policies;
- the departments of Public Works and Services, Health and Social Services, and Transportation can demonstrate that they are properly administering contracts for goods and services in accordance with the applicable laws, regulations, and policies; and
- the GNWT has a quality assurance process to monitor whether individual government departments and entities are complying with the applicable laws, regulations, and policies for contracting for goods and services.

Scope and approach

We audited a selection of 120 contracts for goods and services (40 randomly selected contracts from each of three departments: Public Works and Services, Health and Social Services, and Transportation) for the 2007–08 fiscal year. These three departments accounted for 77 percent of the total dollar value and 45 percent of the number of contracts for goods and services for government departments listed in the 2007–08 contract registry. We audited these contracts to assess whether contracts were being awarded and administered in compliance with applicable laws, regulations, and policies.

We examined the contract and payment files to determine whether

- the requirements of the contract were clearly defined;
- the reasons for the selected procurement strategies were documented and were in accordance with the Government Contract Regulations, the Business Incentive Policy, the Agreement on Internal Trade, and any other applicable GNWT agreements;

- under competitive bidding, the contract was advertised in an open and fair manner and evaluation criteria were clearly established and identified in the solicitation document;
- under competitive bidding, the evaluations of responses were in accordance with the published evaluation criteria and were conducted in a fair manner;
- the contracts were awarded and approved by officials with the appropriate authority to do so;
- contract management included suitable monitoring of contract activities and approval of contract change orders, as required; and
- payments were authorized by those with the appropriate authority and evidence existed that the goods or services were received.

We reviewed the Government of the Northwest Territories’ (GNWT) laws, regulations, and policies on contracting to determine whether the GNWT’s contracting framework is adequately designed to help ensure that contracts for goods and services are awarded in an open and fair manner and administered in accordance with the applicable laws, regulations, and policies.

We also interviewed officials from each of the three departments we selected samples from, as well as the Manager of the Business Incentive Policy Monitoring Office, the Director of the Internal Audit Bureau, and the Comptroller General to determine whether an adequate quality assurance function for contracting is in place and to determine whether the GNWT has set a maximum tolerable exception rate for non-compliance with applicable laws, regulations, and policies for contracts for goods and services.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources
The departments should be able to demonstrate that they are awarding contracts for goods and services in an open and fair manner in accordance with the applicable laws, regulations, and policies.	<ul style="list-style-type: none"> • Government Contract Regulations (2006) • Financial Administration Manual, Part VII–Procurement and Contract Administration (2006)
The departments should be able to demonstrate that contracts for goods and services are being properly administered in accordance with the applicable laws, regulations, and policies.	<ul style="list-style-type: none"> • <i>Financial Administration Act</i>, Part IV • Financial Administration Manual, Part VII–Procurement and Contract Administration (2006)
The Government of the Northwest Territories’ contracting framework and processes should be designed to help ensure that contracts for goods and services are awarded in an open and fair manner and administered in accordance with the applicable laws, regulations, and policies.	<ul style="list-style-type: none"> • <i>Financial Administration Act</i>, Part IV • Government Contract Regulations (2006) • Financial Administration Manual, Part VII–Procurement and Contract Administration (2006) • Business Incentive Policy (2006) • Negotiated Contracts Policy (2007) • Agreement on Internal Trade, Chapter 5 (2007)
The Government of the Northwest Territories should have a quality assurance process to monitor whether individual government departments and entities are complying with the applicable laws, regulations, and policies for contracting for goods and services.	<ul style="list-style-type: none"> • Financial Administration Manual, Part VII–Procurement and Contract Administration (2006)

Audit work completed

Audit work for this report was substantially completed on 30 October 2008.

Audit team

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Appendix List of recommendations

The following is a list of recommendations found in this report. The number in front of the recommendation indicates the paragraph where it appears in the report. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Government's Response
Contracting policy framework	
<p>16. The Government of the Northwest Territories (GNWT) should update and improve the accessibility and availability of its policy and guidance on contracting to make it easier for GNWT staff to use. (11–15)</p>	<p>Agreed. The policy guidance on contracting for the Government of the Northwest Territories (GNWT) currently rests in the Government Contract Regulations and within sections of the Financial Administration Manual (FAM). The current arrangement does not concisely consolidate the rules for contracting into a single guide or source. Doing so would assist employees in ensuring that they were meeting the requirements as established by the GNWT. In addition, the implementation of a new financial system will assist in standardizing some of the business processes associated with contracting for goods and services.</p>
Delegation of authority	
<p>25. The Department of Finance should reinforce and increase awareness of the requirements for delegation of contract authorities and enhance monitoring to ensure that such delegations are being made in accordance with applicable laws, regulations, and Government of the Northwest Territories (GNWT) policies. (18–24)</p>	<p>Agreed. Financial Administration Manual (FAM) sections 1801 and 1802 outline the authorities and requirements related to the delegation of powers. There is a need to reinforce these requirements through increased awareness within departments and monitoring by the Office of the Comptroller General. Steps are under way to ensure that authorities are consistently delegated from ministers to deputy ministers. As part of the implementation of the new financial system process, FAM 1801 and 1802 will be revised to clarify the requirements associated with delegation of authority as well as to reinforce the monitoring mechanisms of the Comptroller General.</p>
<p>30. The Department of Finance should implement an independent contract dispute resolution mechanism, as required by the Agreement on Internal Trade, that will have the ability to address complaints not resolved through existing departmental processes. (26–29)</p>	<p>Agreed. The Government of the Northwest Territories is a signatory to the Agreement on Internal Trade. Procurement documents will be modified to identify that contact point, as required under Article 513 (Complaint Procedures—Provinces), for filing disputes related to the application of the Agreement on Internal Trade.</p>

Recommendation	Government's Response
<p>Administration of contracts</p> <p>78. Departments should strengthen their processes and practices to ensure that all contracts for goods and services are administered in accordance with applicable laws, regulations, and policies. (56–77)</p>	<p>Agreed. Management believes that better communication of those requirements through a more concise set of rules (as addressed under a previous recommendation) as well as increased monitoring of delegation of authorities will increase compliance with existing laws, regulations, and policies. Increased training and orientation for procurement staff and managers engaged in competitive purchasing will be considered.</p>
<p>Quality assurance process</p> <p>85. The Comptroller General and the departments of Public Works and Services, Health and Social Services, and Transportation should strengthen their quality assurance processes that monitor adherence to applicable laws, regulations, and policies in the awarding and administration of contracts. This strengthening should include the establishment of risk tolerances against which actual performance can be measured. (82–84)</p>	<p>Agreed. Increased emphasis on monitoring and quality assurance is necessary to reduce the risk of non-compliance in the administration of contracts. A review of authorities and responsibilities will be undertaken to ensure that appropriate mechanisms are in place and assess the resource requirements necessary to strengthen monitoring and quality assurance processes.</p>

