

# Chapter 7

## Department of Human Resources Development/ Andersen Consulting

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# Department of Human Resources Development/ Andersen Consulting

## Background

7.1 In our 1995 Report we included some discussion on the new systems development project undertaken by the Department of Human Resources Development (HRD) in association with Andersen Consulting. Considerable interest in this issue was expressed by members of the Public Accounts Committee and the Legislative Assembly.

7.2 At the time of completion of our 1995 Report HRD and Andersen Consulting had just signed a formal contract (dated 20 December 1995). We agreed to report further on the contract and to consider the method used to purchase computer hardware and software.

## *Purchase of computer hardware and software*

7.3 On 14 March 1996, officials of HRD appeared before the Standing Committee of Public Accounts (PAC). As a result of this meeting the PAC adopted a motion asking the Auditor General to review the purchasing arrangement for computer hardware and software needed for the HRD project. We are preparing a separate report on this matter for the Public Accounts Committee.

## Contract review

### *Scope*

7.4 As discussed last year the HRD initiative focuses on restructuring their operations and changing the way they provide services to their clients. The agreement in place requires Andersen Consulting to finance the cost of the work; they will be repaid out of savings realized as a result of the changes.

7.5 At the time of writing our 1995 Report, Andersen Consulting had been working on the initiative for over 14 months without a signed contract. We expressed our concern about this situation, and stated “*we believe that all of the undertakings with Andersen Consulting should have been set out in a contract prior to the firm commencing this work.*”

7.6 Our 1995 Report stated “*the consultants’ proposal, submitted in January 1994, contained many undertakings which should have been embodied in a contract.*” We carried out a preliminary review of the signed contract. The purpose of this review was to compare the terms of the contract with the requirements of the Department as set out in their original Request for Proposals dated 13 December 1993 and with the

undertakings of the consultant contained in their January 1994 proposal. Our objective was to ensure a high degree of consistency between what was originally asked for, what was promised and what was finally agreed upon.

7.7 We will complete a more detailed review of the contract when the system is operational. This review will focus on the performance of both parties to the contract, and will assess their compliance to date with the terms of the contract. The results of this review will be reported in our 1997 Report. We will also monitor payments to Andersen Consulting under the contract and the lease agreement, to ensure these payments comply with the terms of the agreement. Part of this process will include forming an opinion on the accuracy and appropriateness of the calculations of savings arising from the restructuring.

## Findings

### Contracts and pricing

7.8 The Province's request for proposals (RFP) stated "*a separate contract will be negotiated for each phase based on the scope, objectives and deliverables of that phase.... Within each contract, there will be provision for both bonus and penalty clauses for the achievement of, or failure to achieve, the defined objectives of the phase.*" The proposal from Andersen implicitly recognizes this phased approach, and states "*Andersen Consulting will bear its cost of participation in the initial phase.*" The proposal goes on to state "*we would welcome a discussion on performance factors as a component of the fixed cost pricing structure. Inclusion of bonus and penalty options will provide the Department with added assurance that the project will be completed cost effectively and to its satisfaction, at all times throughout the life of the project.*"

7.9 Phase I of the project began on 25 March 1994, the date Andersen was notified that it was the successful bidder. Phase I was completed around 28 September 1994, the date the Board of Management approved the Business Case and authorized Phase II. No contract was negotiated prior to the start of Phase I of the project. Andersen Consulting wrote to the Department on 18 July 1994 to confirm the arrangements they had entered into, including their commitment not to charge the Department for time spent and expenses incurred during this phase of the project. The Department signed this letter as "*acknowledged and accepted*" on 7 September 1994. Subsequently, the Province and Andersen signed a Consulting Services Agreement to cover the arrangements made for Phase I. This agreement was dated 27 September 1994, with a termination date of 31 October 1994.

7.10 The Agreement confirmed that "*Andersen shall provide the Services under this Agreement at no cost to the Minister.*" With regard to expenses, the Agreement stated "*Except for payments made by Andersen to third parties with the consent of the Minister and on behalf of employees of the Minister, Andersen shall not be reimbursed by the Minister for any expenses incurred by Andersen in the performance of or in relation to the Services under this Agreement.*"

7.11 As stated, Phase II of the project was authorized by the Board of Management on 28 September 1994. The contract for this phase was not finalized and signed until 20 December 1995. The contract does not contain any clauses dealing with bonuses or penalties relating to the achievement of objectives.

**Departmental comments**

7.12 *HRD was advised by the Office of the Comptroller and the Department of Justice that a contract should not provide for "bonuses" to be paid, that the product/service should be set and the fees negotiated accordingly. As a result of this advice, such a provision was not included in the contract. With respect to "penalties", if the objectives i.e. the realization of the projected savings, are not met, then Andersen is not repaid for their investment in the design, development and implementation. This is, in fact, the penalty.*

**Financing**

7.13 The RFP stated "*It is a requirement that the Company finance the development and delivery of the total business solution.*" The Andersen proposal acknowledged this responsibility.

7.14 The contract also states that Andersen is responsible for financing the design and implementation phase of the project. However, there is also provision for Andersen to receive what are described as Advance Payments prior to the implementation of the system. Although the contract indicates that hardware and software acquired by Andersen should also be subject to this financing arrangement, the Department has agreed to reimburse Andersen directly for these costs.

**Departmental comments**

7.15 *The Department has agreed to reimburse Andersen directly for these costs so that the Department can cost share these costs with the Federal Government. Further, HRD was advised by the Office of the Comptroller that leasing this equipment over time was not deemed to be cost effective.*

**Personnel**

7.16 The RFP stated "*It is mandatory that the Company commit the proposed Project Director to this requirement for the duration of this requirement and that commitment be full-time (100% of the time).*" It also stated "*The Company must provide the services of the proposed resources.*" In each case there was provision for replacement "*for reasons beyond the control of the Company.*" In the case of the Project Director, the Department reserved the right to refuse a proposed replacement if it deemed the individual not suitable.

7.17 The Andersen proposal named the proposed Project Director and a number of other personnel who would be committed to the project.

7.18 The contract requires that each party designate a Project Manager for the project. It also states "*Both Parties further acknowledge that the Project Managers assigned to the Project must be committed to the Project full time for the duration of the Project. In the event that either Party must replace a Project manager for reasons beyond their control, then that Party must provide a replacement of comparable experience, skill and ability.*"

There is no provision in the contract for either party to reject the other party's proposed replacement, although there is provision for consultation "to the extent practical and reasonable" prior to making changes affecting the participation of key personnel. There has been no change to either party's Project director (manager) since the beginning of the Project.

7.19 For personnel other than the Project Manager, the contract states "the Parties reserve the right to determine which of its personnel shall be assigned to perform Services, and to replace or reassign such personnel during the term hereof." As explained in the previous paragraph, there is provision for consultation on changes. In addition, each party states their intent to minimize changes, and to attempt to honour requests for specific individuals. However, this appears to be a softening of the wording in the original RFP.

### **Technology standards**

7.20 The RFP stated "The solution must comply with the New Brunswick Government Technology Standards; and the Federal Government Treasury Board Information Technology Standards, as applicable." Neither the Andersen proposal nor the final contract make explicit reference to these standards. However, the contract does contain an Andersen warranty that "the system shall comply with applicable federal and provincial laws, regulations and policies at the time of final acceptance." In addition, Schedule A to the contract, Scope of Services, lists as one of the design phase objectives "to design a technically feasible, affordable architecture approach that supports the application's requirements, and is consistent with the government of New Brunswick's standards."

### *Conclusions on contract review*

7.21 It is understandable that lengthy and complex negotiations such as these should result in an agreement which differs from that envisaged in a departmental document. Our comparison of the Andersen contract to the original Request for Proposals discloses a number of differences in certain aspects of the arrangements. As we pointed out last year, it would have been preferable if these differences, and the final arrangements with Andersen, had been agreed to and confirmed with Andersen in writing prior to the commencement of the work.

### **Current status of the project**

#### *General*

7.22 Discussions with the Department indicate the project is behind schedule. The original intent according to the business case presented in support of the project was to have the implementation completed by September 1996.

7.23 The work covered by the December 1995 contract has now been broken down into two releases. The first release of the system, called NB Case, was piloted in the Fredericton Region starting in October 1996. The Department anticipated a test period of approximately thirty days and then plans to implement the system in the rest of the Province. At the time of writing our Report, the Department hoped to have the final release of the project as set out in the December 1995 contract in place by March or

April 1997. We were advised that lease payments would then be determined and start ninety days after acceptance of Release I.

7.24 However, it has come to our attention that HRD has signed a supplementary agreement on fees which saw a payment to the consultant of \$937,550 for services rendered prior to 31 March 1996.

7.25 This new agreement is entitled Interim Services Agreement, and covers costs accumulated to 31 March 1996. The agreement is dated 29 March 1996 and was completed after the services had been performed. We would have thought the cost of these services would have been included in the original contract. At least a portion of the services in the agreement identified as data mapping services appear to be also covered in Appendix "A" of the original contract with the consultant.

### Departmental comments

7.26 *The operation and support services rendered by Andersen under this supplementary agreement provided immediate operational benefits to the Department beyond those benefits to be realized as a result of the implementation of the new system. These benefits included the implementation and support of a wide area network facilitating electronic communications and electronic scheduling across the province; the establishment and management of a technology support centre within the Department to provide effective support to all users across the Department from a central location; the installation of personal computers on all users' desks, formatted to a standard configuration; the immediate identification of overpayments within the existing systems; etc. The money paid to Andersen in respect of these services were paid from the Department's regular operating budget.*

### Other issues

7.27 Our review of the contract identified some other issues that were the subject of debate in last year's Public Accounts Committee meetings. We are providing an update of these issues for the information of the Committee.

### Documentation requirement

7.28 The 20 December 1995 contract anticipated several schedules would be completed within a short period of time. The majority of the provisions were to be completed within sixty days of the contract signing.

- Section 3.4 anticipated a "milestone document" would be produced within the sixty-day time limit. This document was signed on 17 September 1996.
- Detail dealing with payments under the lease (Schedule E) were not complete at the time of signing the contract. This Schedule will not be completed until final costs are available. The Department anticipates completion of payment arrangements and the initial lease payment in March or April 1997.
- Schedules H and I dealt with documenting Minimum and Final Acceptance Criteria. A draft copy of the minimum acceptance criteria was provided to us in October 1996. It deals with the requirements for

Release I of the implementation. The final acceptance criteria will be developed in conjunction with the completion of Release II.

*Annual savings*

7.29 The documentation provided in our 1995 Report and statements by HRD officials at that time anticipated annual savings of \$17.5 million. On 26 March 1996 in the Legislative Assembly, the Department confirmed that this figure was revised to \$12.5 million when the Department took the decision to reinvest some of the staff reduction savings into case management. The impact this will have on payments under the arrangement will not be clear until payments under the lease begin and actual savings are calculated.

*Intellectual property*

7.30 The contract under Section 6.1 says that all rights in the Deliverables and related intellectual property shall remain vested in the consultant. The Department informed us that this decision was taken “based upon a legal opinion that, since it is the intent of the parties to enter into a separate Marketing Agreement as provided for in section 8.1 of the contract, it is in the interest of government not to be liable to a potential buyer of the Deliverables and intellectual property.” No such marketing agreement between HRD and the consultants had been completed as of October 1996.

*Maintenance and support of the system*

7.31 The contract envisages a separate maintenance and support agreement that is not, and was never expected to be, part of the original quoted costs of the initiative. While no contract is yet in place, HRD estimates the annual maintenance and support costs will be at least \$1,500,000.

*Financing costs*

7.32 The project was originally planned for completion in September 1996. As indicated, the Department’s latest estimate is March or April 1997 for full implementation. The financing arrangement appears to allow the consultant to capitalize interest costs from 28 September 1994 on costs as they accumulate until the lease payments commence. The impact of delays will add to the final cost of the project.