

Chapter 9

Department of Supply and Services - Purchasing

Contents

Background	201
Scope	202
Results in brief	203
Tendering and soliciting bids for purchases	204
Granting exemptions and preferences	207
Ensuring compliance with legislation	213
Fairness in the purchasing process.....	219

Department of Supply and Services - Purchasing

Background

9.1 On 15 October 1974 New Brunswick proclaimed the *Public Purchasing Act* (the Act) thereby establishing requirements for purchasing by government. While the Act does not set out its purpose, the Department of Supply and Services has interpreted it to be “to ensure that all suppliers have a fair and equal opportunity to compete for government (provincial) contracts”. This sets procurement in the public sector apart from that in the private sector. While the Act has requirements to ensure that government suppliers are treated fairly and equally, suppliers contracting with the private sector have no such assurance. Private sector contracts may be awarded to suppliers on any basis, as long as legal requirements are met.

9.2 Ensuring compliance with the provisions of the Act is important to the people of New Brunswick. If all suppliers have a fair and equal opportunity to compete, they will be encouraged to bid on contracts, pricing will be competitive and cost should be reduced.

9.3 However if the provisions of the Act are ineffective, or compliance is not assured, public sector contracts could be awarded on an inequitable or uneconomic basis. For example, favoured suppliers might be the only ones winning contracts. The result could be that other suppliers would see no reason to bid on contracts as they would perceive that they would have little, or no, chance of winning. Thus competition would be reduced, suppliers would be treated unfairly and the best suppliers would not be rewarded. The Department estimates that fair and open competition for contracts saves between 20% and 25% in contract costs. Therefore the financial impact on taxpayers of an ineffective Act, or non-compliance with its provisions, could be considerable.

9.4 The Act governs most purchasing of supplies and services by departments. It also prescribes the requirements for the purchasing of supplies and services by government funded bodies. These include municipalities, many Crown corporations, hospital corporations, universities and regional solid waste commissions.

9.5 Under the Act, the Minister of Supply and Services (the Minister) is assigned responsibility for “the administration of this Act”. The Act

also provides that “except as otherwise provided in this Act or in the regulations each department shall purchase its services and supplies through the Minister”. The Minister assigns the Central Purchasing Branch (the Branch) responsibility for the procurement of equipment, materials, supplies and services for government departments. The Branch’s mission statement states the Branch “is responsible for the acquisition of goods and services, required by central government agencies and other publicly funded bodies, in a timely and economical manner, which provides fair and equitable access to all interested suppliers and supports government policy.”

9.6 In 1999-00 the Department, through the Central Purchasing Branch, was responsible for purchasing \$304 million worth of supplies and services. In 2000-01 this increased to \$359 million. The number of purchase orders also increased marginally from 4,599 in 1999-00 to 4,669 in 2000-01.

Scope

9.7 Our objective for this audit was as follows:

To determine if the Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the Public Purchasing Act and Regulation with respect to:

- *tendering and soliciting bids for purchases;*
- *granting exemptions and preferences; and*
- *ensuring the compliance of government funded bodies and departments with their responsibilities under legislation.*

9.8 The Central Purchasing Branch was the focus of our audit. However, other departments including Family and Community Services and the Office of the Comptroller were also contacted in completing our work.

9.9 In order to ensure the Minister was fulfilling these responsibilities, we had to determine if the Department had appropriate systems and practices in place. Our audit objective reflects this approach. To aid us in determining if the Department of Supply and Services was meeting this objective we developed four audit criteria. The criteria are the benchmarks against which we audit to conclude on the audit objective and are as follows:

- the Department should be aware of its responsibilities and duties under the *Public Purchasing Act* and regulation;
- the Department should have systems and practices in place to address the Minister’s responsibilities and duties under the Act;
- the Department should regularly review these systems and practices to ensure they are adequate; and
- supplies and services purchased by government should comply with policies and procedures established in the *Public Purchasing Act*.

9.10 In conducting our audit we met with a number of Branch staff. We reviewed the Branch's policy and procedures manual and any other relevant documentation to help establish how the systems and practices fulfilled the Minister's responsibilities.

9.11 After identifying the relevant systems and practices, we assessed their adequacy. We then performed a small test on each system to verify that the practice was consistent with the policies.

9.12 In addition, we audited a sample of recent payments by government departments. We also reviewed the test results of an audit done on purchasing by the Comptroller's Office. Both of these steps were conducted to obtain an idea as to whether departments, including the Department of Supply and Services, were complying with legislation.

Results in brief

9.13 The Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation with respect to the tendering of purchases.

9.14 The Department's system for the purchasing of supplies between \$1,500 and \$5,000 meets the responsibilities assigned to the Minister under the Act. However, we found instances where staff in the department purchasing the supplies did the price solicitation; this is contrary to the Regulation. The Act does not cover purchases of services less than or equal to \$10,000, leaving the Minister with no direct responsibility for purchasing these.

9.15 The Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation with respect to the granting of exemptions. However, we did find examples of what we considered the inappropriate use of an exemption.

9.16 With the exception of an inconsistency between policy and legislation for schools, the Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation with respect to the granting of preferences.

9.17 Except for the lack of a formal policy for training, the Minister has met his responsibilities for educating departments and government funded bodies about their responsibilities under the Act.

9.18 The Minister is not fulfilling his responsibilities for the enforcement of departmental and government funded bodies' compliance with the Act. In addition, the Comptroller is not fulfilling his responsibility for enforcement as set out under the Act.

Tendering and soliciting bids for purchases

Tendering

9.19 As stated earlier in the chapter, the Department's view of the purpose of the Act is "to ensure that all suppliers have a fair and equal opportunity to compete for government contracts". Tendering, and the associated process, is critical to ensuring this. Most purchasing in the public sector is conducted using this process and its effective operation is essential to assuring fairness and value in purchasing by government.

9.20 Section 4(1) of the Act establishes tendering as the basis for public sector purchasing. This can include requests for proposals. The section requires that all purchases of supplies over \$5,000 and services over \$10,000 be tendered unless exempted by the Act or Regulation.

9.21 Legislated requirements for the tendering process are found in sections 12 to 23 of the Regulation. The Central Purchasing Branch's policy manual sets out an extensive and comprehensive process to be used when tendering is required.

9.22 After we identified the major controls in this process we assessed their adequacy. We then performed a small test on the system to ensure it, and the controls, were working as documented and to verify that the practice was consistent with the policies and legislation. In addition, we audited a small sample of recent tenders by government departments.

9.23 We concluded that the tendering process established in the Branch's policy and procedures manual meets the Minister's responsibilities under legislation. Our comparison of the documented system to the actual practice used by the Department indicated that the tendering system is operating as intended.

9.24 One of the test items was a five-year contract for supplying insurance to the Province. The contract was awarded on the basis of a bid of \$428,500 for the first year of the five-year contract. Only the price for the first year of the contract was quoted and it was on this basis that the contract was awarded. In the second year the price jumped over 33% to \$570,000. This example shows a significant problem for the Department in the tendering of a long-term contract. We are concerned with how the Department structures its long-term contracts to protect itself against price increases of this nature. Neither the Act nor the Branch's policy manual provides guidance on this issue.

9.25 We see at least two possible solutions to this problem. Contracts that carry the risk of interim price increases could contain terms to limit the extent of increases beyond the prices quoted in the successful tender. If increases turn out to be beyond the limits, the contracts could be re-tendered. Alternatively the Department could tender contracts of this nature for a shorter term.

Recommendation

9.26 We recommended the Department ensure that long-term contracts contain provisions that protect the Province from price increases not provided for in the contracts.

Departmental response

9.27 *Your review of a test item for insurance concluded that a general problem exists for long-term contracts. However, this type of contract is rare among those being undertaken. In this particular instance, the price for subsequent years (beyond first year/bid price) did increase, but it should be noted that the loss experience in the first year is an important determining factor for subsequent years' price and in other instances the price may not have risen so dramatically or perhaps resulted in lower costs.*

9.28 *The Department has examined a number of options and discovered a complicated array of risks, potential costs and potential benefits for each alternative approach to insurance coverage considered. One of the solutions you offered suggested a limit on extent of increases beyond the initial year price, and, while this is a possibility, it would be our view that the bidders would address this constraint by increasing the initial price to cover the risk. As well, the option to utilize a shorter term would tend to increase bid prices to cover the uncertainty of a reasonable period to cover overhead costs. The solutions offered will be carefully considered and evaluated along with a number of others in development of the upcoming insurance tender.*

Conclusion

9.29 We concluded that the Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation with respect to the tendering of purchases.

Price solicitation

9.30 Price solicitation is another process the Minister uses to purchase supplies and services. The Branch's manual describes it as a process "where oral and written quotes are obtained from vendors without formal advertising and does not require a sealed bid, public opening, public reading of bids and is not subject to the standard terms and conditions and tendering rules". Generally the process is not as onerous as tendering, nor is it as open or competitive.

9.31 Section 4(1) of the Act requires tendering where purchase levels are greater than \$5,000 for supplies and greater than \$10,000 for services but does not cover purchases below those levels. Section 24 of the Regulation charges the Minister with the responsibility for purchases of supplies estimated at between \$1,500 and \$5,000 including HST and sets out the rules and procedures the Minister is to use in soliciting prices for these supplies.

9.32 Section 4(4) of the Act allows price solicitation in other situations if the Minister decides it is practicable and in the best interests of the

Province. However this section was not used in 2000-01 and is rarely, if ever, used.

9.33 The Department's documented system for the purchasing of supplies between \$1,500 and \$5,000 meets the responsibilities assigned to the Minister under the Act. However our review of actual practice showed that in two of the three price solicitations examined, staff in the department purchasing the supplies did the price solicitation and these were only reviewed (not conducted) by Branch Purchasing Officers. Where our sample was very small we would not have expected any deviations from a process described in legislation and policy.

9.34 We believe that if Branch Purchasing Officers do not solicit the bids, the process is less reliable. For example departmental staff may not know the best suppliers and bids might be obtained from suppliers that would not give best pricing or best quality. Additionally, the bids may not have been solicited in the proper manner. A review of the bids by the Purchasing Officer may not reveal these shortcomings.

Recommendation

9.35 We recommended the Department of Supply and Services comply with legislation and solicit price quotations from suppliers rather than allowing departments to conduct this activity.

9.36 The Act does not cover purchases of services less than or equal to \$10,000, leaving the Minister with no direct responsibility for purchasing these. These purchases do not have to be made through the Department and no outside controls over these purchases have been established in legislation. The Department has developed internal policies to cover low dollar purchases of services that others have asked it to make for them.

9.37 It is not obvious why legislation would not require the Minister to purchase services of \$10,000 or less and use the same systems and practices as for supplies of \$1,500 to \$5,000. Such a system could guarantee at least some competition between vendors and allow access to the contract for more suppliers. As it stands now purchasers of these services may obtain them however they choose.

9.38 As the purpose of the Act is to lend fairness to a competitive purchasing process, we believe legislation should cover these purchases and the procedures used should mirror those used for supplies.

Recommendation

9.39 We recommended that purchases of services of \$10,000 or less be subject to the same provisions as purchases of supplies between \$1,500 and \$5,000.

Departmental response

9.40 *Your recommendations regarding purchasing officers doing price solicitation for services under \$10,000 have been noted. Given that we do not know the amount of services of less than \$10,000 value purchased by departments, it would not be possible to determine if this recommendation*

could substantially increase workload and thereby, resource requirements. We would suggest that in the longer term, more delegation of small value purchases to departments can be cost effectively achieved supported by enhanced reporting, monitoring and control measures that may be available with new e-Procurement systems which are being implemented.

Conclusion

9.41 Legislation requires the Branch's Purchasing Officers to conduct price solicitation. Apart from the failure to comply with this requirement, we found the system and practices met the Minister's duties under legislation.

Granting exemptions and preferences

Exemptions

9.42 The process of granting exemptions allows government to purchase supplies and services without being subject to certain, or in some cases all, requirements set out in the *Public Purchasing Act*. Some exemptions require the approval of the Minister, but many others do not. Exemptions are available to all parties covered by the Act, including government funded bodies and departments.

9.43 Purchasing exemptions exist for many different reasons. Some of the exemptions requiring the Minister's approval include:

- emergency or urgent situations;
- an absence of competition for technical reasons and when only one vendor can supply the required product;
- compatibility of the product;
- continuation of guarantees on product; and
- specific named services provided such as advertising and financial services.

9.44 Examples of exemptions not requiring ministerial approval include:

- departmental purchases below \$10,000 for services;
- services where legislation requires they be provided by professionals such as lawyers and chartered accountants; and
- departmental purchases for supplies such as school textbooks and drugs for recipients of social assistance.

9.45 Additionally, government funded bodies' purchases under \$25,000 for supplies and under \$50,000 for services are completely exempted from the Act.

9.46 The impact of such a range of exemptions is considerable. The use of an exemption can result in access to a contract being restricted to only one vendor, thereby excluding other vendors from the usual procurement process. As well, using exemptions to purchase supplies and services usually results in decreased competition and this, in turn, could lead to higher prices.

9.47 As our objective was to determine how well the Minister fulfils his direct responsibilities we focused our attention on the systems and practices in place to control exemptions the Minister is required to approve. However, since the Act allows many other exemptions and since the Minister is responsible for administration of the Act, we have made some comments regarding these as well.

9.48 One of our test items was exempted from the Act through what we believe is the inappropriate use of an exemption. The exemption relates to a service contract signed with a service provider in the 1990's and was for administering the employee family assistance program. In 1995 the Act was amended to apply to services as well as supplies and, as such, would now apply to this contract. A short while later the Board of Management set out a policy stating no contract should run longer than five years unless the Board approved the extension. There was no approved extension. As such, the contract should have been tendered by 2000. However the contract was exempted from tendering for another two years by using section 27.1(v.5) of the Regulation, which allows an exemption from tendering for the management of financial assets and liabilities.

9.49 Based on the results of our review of this transaction we were unable to satisfy ourselves that this exemption was intended for situations such as this. Through our audit we found evidence that Central Purchasing staff expressed similar concern over the applicability of the exemption. They too did not believe "it was intended for this sort of service". We believe the use of this exemption to not tender the contract is inappropriate.

9.50 In our review, we found another service contract that was signed in the 1970's. In accordance with legislation in effect at that time, it was not tendered. It has never been tendered or extended since that time. This would also appear to be in conflict with the Board's policy of allowing no contract to run longer than five years unless the Board approves the extension.

9.51 In both of these cases, the benefits to the Province of not tendering are unclear. Companies that might have competed for the contracts are denied access to them, thereby limiting competition and increasing the risk of higher costs. This does not seem to be in keeping with the purpose of the Act, which is to promote open and fair competition.

Recommendation

9.52 We recommended that contracts be re-tendered at a minimum of every five years unless approved for extension by the Board of Management.

Departmental response

9.53 We agree that for the bulk of contracts, a re-tender within five years would be an acceptable policy with recognition for particular circumstances where longer terms are warranted and supported by Board approval.

9.54 Section 27.1 (p) of the Regulation allows the Minister to grant exemptions where it is established that there is a significant economic benefit to the Province if the purchase is made from a certain vendor and the Board of Management has recommended it.

9.55 While this exemption is used only rarely, we found two contracts awarded by the use of this exemption.

9.56 We reviewed a large contract for software development that was awarded to a vendor without tendering because of perceived economic benefits to the Province. The contract was for development of a client service delivery system and was awarded in 1995 to a local software development firm. Analysis supporting the Board of Management decision to exempt this contract from tendering indicated that government, and the vendor, expected development cost to be \$4.5 million and the system to be operational within three years.

9.57 In 1999 government estimated the contract was only 50% complete. Costs were more than double the original contract price and were approaching \$9.5 million. By early 2000 the contract was still only 70% complete and costs were over \$20 million.

9.58 We reviewed the contract to see if it contained adequate provisions to protect the Province from budget overruns such as this. We found the contract had provisions that allowed it to be terminated if progress was inadequate or costs too high. However, whatever monitoring was done did not result in any such action by the Province. With the slow progress and high costs associated with the early stages of this project it should have been apparent that a serious problem existed.

9.59 One of the factors that may have increased the chance that delays and cost overruns were not addressed early in the project is the lack of effective monitoring. For monitoring to be effective, it is necessary that someone without direct involvement in the contract perform the monitoring. It is also important that reporting of any serious problems should take place immediately.

Recommendation

9.60 We recommended that there be an effective monitoring process for contracts where the risk to the Province of incurring unexpected costs or unexpected delays in delivery are significant. We recommended that the Department of Supply and Services undertake this responsibility.

Departmental response

9.61 *(This) recommendation ... requires considerable analysis since it would shift a portion of other departmental responsibilities to this department. Under current practice, a department provides the specifications for their procurement needs and accepts delivery when satisfied the specification is met. While we may assist departments in the process of determining the specifications or the means to obtain what they*

need, we consider our role should not include a measurement or assessment of the product or service procured.

9.62 *We do consider, however, that a Contracts Office within the Department of Supply and Services could perform a number of important and desirable functions including:*

- developing and maintaining a range of standard contracts and clauses;*
- maintaining a central repository of government contracts;*
- providing technical advice and assistance on contract development; and*
- ensuring all government contracts contain essential terms to meet requirements for quality, timing, cost control, and assessment.*

9.63 *The Central Purchasing Branch is prepared to develop a proposal for a Contracts Office with estimated resource costs for Board of Management consideration.*

9.64 In the case of the second contract, signed in 1999, an expression of interest (EOI - an initial offering which is sent into the market to see if any suppliers are interested in the work and to get a rough idea of what the cost might be) was sent out for the required services. Several replies were received together with price estimates.

9.65 In the normal tendering process the next step would be to request a proposal from each of the firms which submitted the EOIs. Then an evaluation of the proposals would be made and the Department would award the contract to the best bid. However a decision was made by the Board of Management to stop the tendering process at the expression of interest stage and instead award the contract using the economic benefit exemption.

9.66 The contract was awarded for \$2.6 million a year for three years. Two of the expressions of interest, and the department's own cost estimate, were substantially below the cost of the contract awarded. In fact over three years the cost of the contract awarded will be \$7.8 million versus another vendor's estimated cost of \$3.9 million.

9.67 We reviewed the Department's purchasing file for this contract to see if there was evidence to indicate whether any of the other bidders were asked to submit any "economic benefits" that would arise from their being awarded the contract. We found no evidence that any of the other vendors were asked to submit their economic benefits before the contract was awarded.

9.68 We recognize the Board of Management's right to grant an exemption where it is established there will be a significant economic benefit to the Province. Our concern is related to the lead-up to that

decision being made. We believe it would be beneficial for the government to have an indication of potential economic benefits from other qualified suppliers before making a final decision.

Recommendation

9.69 We recommended that the Department review the current process surrounding the granting of exemptions on the basis of economic benefits to see if a change can be made that will involve more suppliers and, in turn, create more competition before a final decision is made.

Departmental response

9.70 ... the Department would be prepared to review the use of this exemption, however, it is a seldom used exemption. The review should include consideration of the need for public purchasing regulatory and agreement issues to be addressed with the Department prior to Board consideration of economic development exemption requests.

9.71 We were unable to establish the reason for some exemptions. These include exemptions for the services of financial analysts, the management of investments of financial assets and liabilities, and public relations and advertising. For example a payment to a financial manager was one of our tested purchases. As a financial manager they are exempted from tendering under section 27.1 of the Regulation. The benefit to the taxpayers of not tendering is unclear. Certainly there are many financial managers in the marketplace that could compete for the business. If there is a concern with service quality then a type of tender (Request for Proposals) could be used that ensures that both price and quality of service are considered in the hiring process. Perhaps the department requesting the exemption should be required to demonstrate that the exemption is necessary and beneficial.

9.72 Other exemptions exist that can reduce or eliminate competition and restrict suppliers' access to contracts. For instance, section 27 of the Regulation allows a professional to be exempted from the provisions of the Act, but only when another piece of provincial legislation requires that the service may only be provided by that professional. Ten professions are covered by this exemption including chartered accountants, barristers, dentists and engineers. The private sector routinely hires these professionals and, in many cases, obtains bids from competing professionals so that they get the best price and the best quality of service. Additionally, government successfully hires many other service providers using a competitive process. To give a blanket exemption from competition to these professions would appear inappropriate and not in keeping with the principle of fairness conveyed by the Act.

9.73 It would also appear that some departments might be using this exemption inappropriately. For example, a recent consulting contract was awarded to a lawyer without competition at \$250 per hour. This contract was not subjected to competition because government exempted the contract by applying section 27 of the Regulation. However, an exemption

is only allowed under section 27 where legislation specifically sets out that a lawyer must perform the service. In this case the work was for consulting services related to improving the operations of a government department. Unless some legislation restricts the consulting work to the legal profession, the exemption was used inappropriately. We are not aware of any legislation that provides this restriction.

9.74 As can be seen from the above, exemptions can have significant effects on whether the intent of the Act is complied with. Exemptions can allow selected suppliers to obtain contracts without competition and prevent other suppliers from having access to these contracts. In our opinion the Department should ensure that an exemption is only granted where it can be shown that the exemption is clearly applicable and of benefit to government.

9.75 As well it would be appropriate that all exemptions are reviewed on a regular basis and their use continued only where the exemption serves a useful function.

Recommendations

9.76 We recommended that the use of exemptions be reviewed for compliance with legislation.

9.77 We recommended that the Minister review exemptions from time to time to ensure they continue to be justified. Where necessary, they should be restricted or eliminated.

Departmental response

9.78 *To cover the audit report's findings, a broad review of events regarding exemptions, their use, and possible reduction and/or consolidation will be initiated. The full review would culminate in a proposal to amend purchasing Regulations and the Act, where appropriate.*

Conclusion

9.79 The Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation with respect to the granting of exemptions. However, we did find examples of what we considered the inappropriate use of an exemption.

Preferences

9.80 Using preferences in awarding contracts allows the Minister to promote suppliers in New Brunswick and the Atlantic Provinces by awarding contracts to them even when their bid is not the lowest. Preferences have not been used often in the past. For example in 2000-01 only fifteen preferences were granted with the largest being approximately \$1,700, or 4.2 %, on a \$42,000 contract for printing.

9.81 Our audit work revealed an inconsistency between legislation and policy. Legislation establishes that preferences are not to be granted to suppliers for the purchase of supplies over \$25,000 except when all Canadian vendors are invited. However the Branch's manual allows

schools to grant preferences to Atlantic Provinces vendors on purchases of supplies over \$25,000. The two are in conflict. The Department noted that the conflict exists because legislation does not match the internal trade agreements exactly. None of the fifteen preferences granted in 2000-01 were for supplies over \$25,000.

Recommendation

9.82 We recommended that the Department ensure legislation and policy covering the granting of preferences over \$25,000 for schools are consistent.

Departmental response

9.83 *(This) recommendation ... has been accepted and steps taken to correct. We note that there were no cases where the policy compromised the legislation and the Department would have determined the legislation to override the policy, should a case occur.*

Conclusion

9.84 With the exception of the inconsistency between policy and legislation for schools, the Department of Supply and Services has appropriate systems and practices in place to ensure the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation with respect to the granting of preferences.

Ensuring compliance with legislation

9.85 The Act contains many provisions that apply to departments and government funded bodies and specifically charge them with certain responsibilities under the Act.

9.86 Departments are required to purchase nearly all of their supplies and services through the Department of Supply and Services. Only in a few cases such as where services are \$10,000 or less or certain supplies and services are exempted under Regulation, may a department purchase directly without using the Department of Supply and Services. Since the Department of Supply and Services does most of the purchasing for departments, their responsibilities under the Act are relatively simple. However departments must understand when they can purchase without using the Department.

9.87 Government funded bodies include municipalities, hospitals, universities, and most Crown corporations. Unlike departments, they do most of their purchasing directly and do not have to use the Department of Supply and Services to purchase their supplies and services. That means that they must take responsibility for complying with many provisions of the Act. For instance, as government funded bodies tender for supplies and services they also must comply with the provisions that deal with tendering. As they grant exemptions under the Act they must also comply with any relevant provisions.

9.88 To accomplish this, all parties have to understand their responsibilities and how to apply the Act in all possible situations. As such, education and enforcement are essential parts of ensuring the Act is complied with.

Education of departments and government-funded bodies

9.89 The Minister is responsible for administration of the Act. In our opinion this responsibility would include ensuring those covered by the Act are aware of their responsibilities and how to fulfil them.

9.90 Central Purchasing Branch clearly recognises this responsibility by stating that one of its goals is “to ensure that all government departments, agencies and government funded bodies clearly understand the legislation, policies and procedures related to public procurement.”

9.91 The Act makes no reference to education and the Branch’s manual does not document any systems and practices for the education of departments or government funded bodies. While the manual has no documented systems to deal with education, the Department does address this responsibility. However its systems are informal in nature and are a mixture of reactive and proactive measures. Some of the significant measures the Branch uses are described in the following paragraphs.

9.92 The Branch has provided educational opportunities for all departments and government funded bodies covered by the Act through symposiums, the last being a comprehensive session held in April of 2001. All of these parties were invited and had an excellent opportunity to learn about changes in public procurement and to update their existing knowledge. However the previous symposium was held five years before.

9.93 The Department has established a website which provides general information on public purchasing, links to related websites, a link to the Act and other useful information. The Department will provide help to staff from any government body that calls with their problem.

9.94 With regards to education aimed specifically at departments, presentations have been made from time to time at their request or because the Branch has become aware of a departmental compliance problem. Additionally in 1996 the Deputy Minister of Supply and Services requested that a Procurement Co-ordinator be established in each government department. These positions have now been established. To ensure that a Co-ordinator’s knowledge is current the Branch has provided training for them on an annual or semi-annual basis. Feedback from several Procurement Co-ordinators indicated that they found the information provided to them and their departments to be very good.

9.95 Additionally the Branch has just developed a new purchasing manual to help departments. We reviewed this manual and found it to be very informative and useful. We believe it will help the Branch improve delivery of its educational responsibility and it will be a useful tool for others. Distribution of the manual has commenced with the recent issuance to the schools.

9.96 Vis-à-vis government funded bodies, and in addition to the symposiums mentioned above, the Branch made purchasing presentations

to municipalities and hospitals in 1999 and in 2001 it made a presentation to schools.

9.97 Our review of several of these presentations to departments and government funded bodies demonstrated they were comprehensive and set out the major provisions of the Act that departments and government funded bodies need to be aware of.

9.98 To better assure delivery of education to all government bodies we believe that the Branch should establish a formal written policy regarding education and adopt a planned cyclical approach to its presentations, supplementing the educational sessions that are prompted by requests or by changes.

Recommendation

9.99 We recommended that the Department establish a formal policy for educating all parties subject to the Act. This would ensure that a commitment is in place to provide the basic training on a cyclical basis.

Departmental response

9.100 ... the branch has undertaken initiatives, as you have indicated, to enhance knowledge of procurement policy and regulations and we remain committed to this effort in our work plans and activities. We are prepared to create a policy on education, as recommended.

Conclusion

9.101 Except for the lack of a formal policy for training, the Minister has met his responsibilities for education.

Enforcement

Departments - responsibility of the Comptroller

9.102 Section 5(1) of the *Public Purchasing Act* states:

the Comptroller shall refuse the payment of money out of the Consolidated Fund to satisfy a commitment by a department to purchase services or supplies unless the Comptroller is satisfied

(a) that the services or supplies were purchased by the Minister on behalf of the department, or

(b) that the department was authorized by this Act or the regulations to purchase the services or supplies otherwise than through the Minister.

9.103 In essence, the Act states it is the Comptroller's duty to ensure that the Department of Supply and Services makes all purchases for departments unless the Act states otherwise. The Act also requires that the Comptroller ensures purchases made directly by departments are authorised by the Act before he makes any payment. However the Office of the Comptroller limits its testing of disbursements to selected post audits of departments and does no pre-audit of payments to ensure that purchases made directly by departments are authorised under the Act. The Comptroller has delegated that responsibility to departmental personnel.

9.104 We believe that legislators saw the need for someone independent of the department purchasing the supplies or services to decide if purchases were authorised by the Act before being paid. If legislators had not intended this, there would have been no need for section 5(1) of the Act.

Conclusion on Comptroller's responsibilities

9.105 The Comptroller is not fulfilling his responsibility for enforcement as set out under the Act.

9.106 We brought this matter to the attention of the Comptroller. In response, the Comptroller pointed out the ways in which his office ensures that purchases made by departments are in accordance with the legislation. We do not question that, as stated by the Comptroller, "the current method of proper systems of internal control in each department, supported by clear policy statements and supplemented by focused post payment audit activity is a much more cost-effective approach" than pre-audit of transactions. Nevertheless, this approach will not enable the Comptroller to meet the requirement of the legislation that he "refuse payment" if he is not satisfied with the transaction.

Departments – responsibility of the Department of Supply and Services

9.107 We attempted to determine whether the Department had a duty to formally notify the Comptroller of his failure to meet his responsibility under the Act. Since the Minister is responsible for the Act and it was known that a significant responsibility was not being met, it would seem that the Minister should have formally notified the Comptroller of his concern.

9.108 Departmental staff did discuss the matter informally with the Comptroller. However, no changes to the Comptroller's procedures took place and the Department took no further action to either ensure compliance with legislation or to initiate a change to legislation.

Recommendation

9.109 **We recommended that the Minister of Supply and Services formally communicate to the Comptroller, the failure to meet legislated responsibilities.**

Departmental response

9.110 *the Department of Supply and Services would be prepared to formally communicate with the Comptroller to initiate consideration of appropriate responsibilities of both departments and finalize a proposal to address audit and enforcement.*

9.111 The Regulation to the Act requires departments to submit several annual reports on purchasing activities to the Minister. Section 46 of the Regulation requires departments to submit annual reports to the Minister of total services purchased with an estimated cost of \$10,000 or less. It also requires a report of the total of all service and supply purchases made under exemptions covered by sections 31 to 44. These exemptions include a broad range of items including school textbooks, equipment and supplies used in the home dialysis program, prescribed drugs for inmates

at provincial penal institutions and works of art for decorative purposes. Both reports are to be submitted annually within 90 days of the fiscal year end.

9.112 Both of these reports cover departmental purchasing activities that the Minister has no direct involvement with. Departments make these purchases and apply these exemptions themselves. Thus the Department of Supply and Services has little knowledge of these purchases unless they receive these reports.

9.113 These reports could help the Minister identify irregularities in purchasing and improve the enforcement of the Act. They might also reveal trends that warrant investigation by the Department.

9.114 None of these reports have been submitted as required. Nor has the Minister taken any steps to obtain reports, thereby not following a legislative requirement that would help identify non-compliance with the Act.

9.115 In the case of exempted professional services, there is no requirement for reporting to the Minister. The Minister therefore has no way of knowing the extent to which professional services are being obtained on an exempted basis. We were surprised to see this because of the Minister's responsibility for administering the Act and the fact that reporting is required for all other departmental exemptions over \$1,500. We believe annual reports on exempted professional services would give the Minister meaningful information on the extent, frequency and trends of such purchases.

Recommendations

9.116 We recommended the Minister ensure departments submit the annual purchasing reports as required by legislation.

9.117 We recommended the Department receive reports on exempted professional services purchased by departments.

Departmental response

9.118 *While the Department of Supply and Services has no difficulty with a requirement for annual purchasing reports, the processing and analysis of this material would require additional resources not available at this time. We are prepared to reassign enough existing resources to develop an electronic reporting template and conduct an analysis to determine the nature and scope of concerns. This should be sufficient to determine if new priority and resources need to be assigned to this area.*

9.119 *The requirement for departments to report on exempted professional services would require an amendment to legislation and this could be incorporated in the proposal to update legislation and regulations.*

Conclusion re Minister's responsibility

9.120 The Minister is not fulfilling his responsibilities for the enforcement of departmental compliance with the Act.

Government funded bodies

9.121 As noted earlier, government funded bodies have responsibilities under the Act, with the tendering of supplies and services and granting exemptions being two of the more important ones. Along with the responsibility to perform these duties is the expectation that they will comply with the associated provisions of the Act.

9.122 The *Public Purchasing Act* does not specifically assign responsibility to the Minister for ensuring government funded bodies comply with the Act. However, as mentioned earlier, the Minister is responsible for administration of the Act. We believe this includes ensuring government funded bodies are meeting their responsibilities under the Act.

9.123 To ensure that government funded bodies are complying with the Act, it is necessary that the Minister has the right to examine their records. The Department believes it has the authority to ensure compliance but the Act does not clearly give that authority to the Minister.

Recommendations

9.124 We recommended that the Minister ensure that legislation clearly assigns responsibility for ensuring the compliance of government funded bodies with the Act.

9.125 We recommended that the Minister ensure that legislation clearly gives him the right to examine the records of government funded bodies.

9.126 Sections 44.1 and 45 of the Regulation require each government funded body to keep purchasing information on any exemptions from tendering that it has allowed using section 27.1 of the Regulation. This includes information on each purchase for which an exemption is used, such as date, vendor name, price paid and the reason for the use of the exemption. Section 4(6) of the Act allows the Minister to request a report from a government funded body for whatever reporting information the Minister requires. The Minister could use the information to help him ensure that government funded bodies are complying with the Act.

9.127 At this time the Minister is not requesting any reports from government funded bodies. As well, the Minister is not performing any audit procedures to ensure that government funded bodies are fulfilling their responsibilities under the Act.

Recommendation

9.128 We recommended that the Minister put in place systems and practices to ensure the compliance of government funded bodies with the Act.

Departmental response

9.129 (This) ... will require additional resources to conduct interdepartmental consultation with departments that are responsible for these bodies.

Fairness in the purchasing process

9.130 The Department accepts a responsibility under the Act to ensure that suppliers have a fair and equal opportunity to compete for government contracts. However if the Act does not apply to certain purchases, and there are no other legislated requirements in place to guide such purchases, some of them may be made in ways that do not provide vendors equal opportunity to compete for government contracts. In our work we have found many instances where government can purchase supplies and services in this manner.

9.131 Purchases can be exempted from the Act when departments purchase services less than or equal to \$10,000 or when government funded bodies purchase supplies of \$25,000 or less or purchase services of \$50,000 or less. In other situations, specific supplies and services are exempted by the Act. (For example, purchases such as certain professional services, supplies for resale, advertising or public relations services and purchases of an urgent nature.)

9.132 When purchases are not covered by the Act there are no legislated procedures set out to guide the determination of the successful vendors. This allows these supplies and services to be purchased without regard to the purpose of the Act.

9.133 The Department has developed a process to use in situations where it is requested to purchase exempted supplies or services for others. This process includes a practice of price solicitation from several vendors wherever practical. This gives more vendors an opportunity to bid on the contract and to add competition to the process.

9.134 We believe a process such as this should be introduced to provide an element of competition for all government purchases not covered by the Act. A similar option would be to use the process required by legislation for purchasing supplies between \$1,500 and \$5,000.

Recommendation

9.135 We recommended that the purchasing of exempted supplies and services follow a process that will ensure a fair and equal opportunity to compete for government contracts.