

July 2019

BC LIQUOR DISTRIBUTION BRANCH
DIRECTLY AWARDED CONTRACTS

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of British Columbia

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The Honourable Darryl Plecas
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Speaker:

I have the honour to transmit to the Speaker of the Legislative Assembly of British Columbia the report *BC Liquor Distribution Branch Directly Awarded Contracts*.

We conducted this audit under the authority of section 11(8) of the *Auditor General Act* and in accordance with the standards for assurance engagements set out by the Chartered Professional Accountants of Canada (CPA) in the *CPA Canada Handbook – Assurance Canadian Standard on Assurance Engagements (CSAE) 3001 and Value-for-Money Auditing in the Public Sector PS 5400*.



Carol Bellringer, FCPA, FCA
Auditor General
Victoria, B.C.
July 2019

The Office of the Auditor General of British Columbia would like to acknowledge with respect that we conduct our work on Coast Salish territories. Primarily, this is on the Lkwungen-speaking people's (Esquimalt and Songhees) traditional lands, now known as Victoria, and the WSÁNEĆ people's (Pauquachin, Tsartlip, Tsawout, Tseycum) traditional lands, now known as Saanich.

AUDITOR GENERAL'S COMMENTS

IN THE PUBLIC SECTOR, procurement is important because it involves significant public investment in contracts that support the delivery of public services. We regularly audit procurement activities within government organizations, assessing whether they follow the principles of fair and open procurement to get the services they need at the best value the market can offer.

The scope of our past audits on procurement has ranged from a single contract (*An Audit of the Contract for the Family Maintenance Enforcement Program*), to a group of contracts (*Receiving Value for Money from Procured Professional and Advisory Services*), to procurement practices in a particular sector (*An Audit of Mid-Size Capital Procurement in Post-Secondary Institutions*).

Government's procurement policy is outlined in its *Core Policy and Procedures Manual* (CPPM) and applies to the Liquor Distribution Branch (LDB).

The LDB is a unique branch of government. It's the wholesaler of liquor and non-medicinal cannabis in B.C., and it sells its products on the open retail market. The revenue from both of these operations contributes to total government revenues. In addition to buying, handling and reselling liquor and cannabis, the LDB procures goods, services and construction to support its business operations, such as IT systems, warehouse and stores construction.

We audited the contract files for 74 contracts that the LDB directly awarded (to support its business operations) for compliance with the CPPM's procurement policies and procedures.



CAROL BELLRINGER, FCPA, FCA
Auditor General

AUDITOR GENERAL'S COMMENTS

Only in exceptional circumstances, which are defined in the CPPM, may a government entity directly award a contract to a supplier instead of pursuing a transparent and competitive approach. These circumstances focus on situations where it is impractical to openly compete an opportunity.

Overall, we found that many of the 74 contract files didn't comply with the CPPM requirements. In 55% of contract files we looked at, the reasons for the direct award didn't fit government's definition of exceptional circumstances. In 73% of the contract files we looked at, there wasn't enough documentation to show that the LDB was impartial and non-preferential when it awarded the contract.

And while we saw evidence of regular review of the directly awarded contracts by senior financial staff, we didn't see notes in the files indicating whether the LDB had obtained legal advice when preparing contracts, especially for non-standard types of contracts. Such reviews are important to minimize the province's exposure to financial and legal risk. The LDB informed us that legal counsel is consulted on procurements.

Government's procurement policies are based on the principles of fair and open procurement to get best value for the public dollar. This means promoting competition among suppliers, purchasing in bulk for multiple government organizations, and promoting value for money, transparency and accountability. Competition in procurement is particularly important to make sure government receives best value for money spent on the goods, services or construction it needs.

Responsibility for procurement has been moved several times within the LDB over the last few years. With organizational changes, there is a risk that staff may not adequately understand the policy requirements for procurement and the chief financial officer's responsibility for oversight of procurement systems.

AUDITOR GENERAL'S COMMENTS

In our report, we recommend training for staff involved in procurement and contract management. It's important that they are familiar with the requirements of government procurement policy and how those requirements support the principles of fair and open procurement. We also provide recommendations for improving documentation in contract files to support procurement decisions.

I would like to thank the staff at the LDB for their cooperation and assistance during our work on this audit.



Carol Bellringer, FCPA, FCA
Auditor General
Victoria, B.C.
July 2019

REPORT HIGHLIGHTS

The **BC LIQUOR DISTRIBUTION BRANCH** is a unique branch of government

LDB is **required to follow** government procurement **policy**



GOVERNMENT POLICY REQUIRES



FAIR & OPEN PROCUREMENT of goods, services and construction

In **exceptional circumstances** a contract can be directly awarded, with no competitive process

We audited **74 directly awarded contract files** for compliance with government policy

Most of the **74** directly awarded contract files **did not contain adequate documentation** to demonstrate procurement decisions met government policy



WE RECOMMENDED more training, analysis, documentation and oversight

SUMMARY OF RECOMMENDATIONS

WE RECOMMEND THAT THE BC LIQUOR DISTRIBUTION BRANCH:

- 1** require all staff involved in procurement or contract management to complete public sector procurement and contract management training
- 2** document, in the contract file, the exceptional conditions permitting a contract to be directly awarded, including reasons that clearly demonstrate why competition was not possible
- 3** require legal review of any non-standard terms or forms of contract, and include evidence of this review in the contract file
- 4** prepare a cost-benefit analysis for any planned service contract valued at more than \$100,000 and include this documentation in the contract file
- 5** require staff who are involved in procurement to check for an existing corporate supply arrangement (CSA) before entering a new contract for goods or services, and document, in the contract file, any reasons for not participating in an established CSA

RESPONSE FROM THE BC LIQUOR DISTRIBUTION BRANCH

THE LDB WOULD like to thank the OAG team for the opportunity to provide management responses prior to the final report being issued.

In 2017 the LDB initiated an independent review of our procurement processes. As a result of this review it was recognized that there were significant opportunities to strengthen the procurement function. In the summer of 2018 a decision was made to reassign the procurement function within the LDB to the Corporate Strategic Services (CSS) division to facilitate rapid transformation, strategic alignment with the business and provide greater oversight. In the fall of 2018 the transformation initiative was kicked-off to review all processes and supporting technology. To-date, significant changes have been made to the organizational structure and processes, including draft standard operating procedures (SOPs) in which, we

have incorporated the recommendations from this direct award audit.

While the audit findings indicate LDB did not meet the requirements of the CPPM in many instances, this conclusion was based on a lack of evidence available in the physical files. In many cases, the LDB did comply with CPPM processes (e.g. legal reviews), but failed to include documentation of these actions within the physical files reviewed by OAG. Internal procedures have been revised to ensure that going forward appropriate background documentation is collected and filed prior to executing a direct award.

Findings	Recommendation	LDB Management Response
Reasons for direct award decision did not always demonstrate that exceptional conditions existed.	We recommend that the LDB require all staff involved in procurement or contract management to complete public sector procurement and contract management training.	<ul style="list-style-type: none"> ◆ Planning for PCMP training is underway with PSA ◆ We expect that current staff will complete the first and second PCMP modules training by December 31, 2019. The third module is not currently offered in Vancouver so we will register once dates in Vancouver are available, alternately LDB has offered to host this session ◆ Future staff will complete training after onboarding (dependency: training sessions dates are available).

RESPONSE FROM THE BC LIQUOR DISTRIBUTION BRANCH

Findings	Recommendation	LDB Management Response
Impartial and non-preferential treatment was not adequately demonstrated.	We recommend that the LDB document, in the contract file, the exceptional conditions permitting a contract to be directly awarded, including reasons that clearly demonstrate why competition was not possible.	<ul style="list-style-type: none"> ◆ LDB has modified its Direct Award Contract template document to ensure this analysis is clearly articulated ◆ This has been included in SOPs.
Government-approved service agreement templates were not always used for service contracts.	We recommend that the LDB require legal review of any non-standard terms or forms of contract and include evidence of this review in the contract file.	<ul style="list-style-type: none"> ◆ LDB consistently seeks legal advise on any non-standard terms or when the agreement is on vendor-paper ◆ This is included in SOPs.
No documentation of cost-benefit analyses.	We recommend that the LDB prepare a cost-benefit analysis for any planned service contract valued at more than \$100,000 and include this documentation in the contract file.	<ul style="list-style-type: none"> ◆ A cost-benefit analysis has been incorporated into the Direct Award Contract template as an appendix ◆ This has been added to SOPs.
No evidence that the LDB checks for corporate supply arrangements.	We recommend that the LDB require staff who are involved in procurement to check for an existing corporate supply arrangement (CSA) before entering a new contract for goods or services, and document, in the contract file, any reasons for not participating in an established CSA.	<ul style="list-style-type: none"> ◆ LDB has modified its Direct Award Contract template to document steps taken for verification of existing CSAs ◆ This has been included in SOPs.

ABOUT THE AUDIT

BACKGROUND

Procurement, and why it is important

PROCUREMENT PRACTICE IN the public sector is important because it involves significant public investment in contracts that support the delivery of public services. It is more than just purchasing. It includes finding, acquiring and buying goods and services from an external source—often via a competitive bidding process—and it must follow government legislation and policy, trade agreements and common law (see [Appendix A](#)).

The Government of British Columbia's expectations and requirements for ministry procurement are set out in a chapter of its *Core Policy and Procedures Manual* (CPPM). The CPPM applies to all government ministries and offices specified in the *Financial Administration Act*. This includes the BC Liquor Distribution Branch (LDB). Broader public sector organizations (i.e., Crown corporations, public bodies and funded agencies) are expected to follow the spirit and intent of these policy requirements.

A stated objective of government's procurement policy is to get the best value for the money it spends. This objective is based on the principles of fair and open procurement. This means promoting competition among suppliers, aggregating demand (bringing together government organizations to take advantage of savings from group purchasing) and promoting value for money, transparency and accountability. Competition in procurement is particularly important to make sure government receives the best value for money it spends on the goods, services or construction it needs.

Obtaining the best value for contracted goods, services or construction is more than just going with the cheapest price that is bid. It includes ensuring the contractual arrangements:

- ◆ define the quality of goods, services or construction
- ◆ are fair to both government and the supplier
- ◆ manage legal and financial risks to government
- ◆ provide for continuity of services (if the supplier changes)

Procurement strategy options

Once a government organization has determined that it needs to procure goods, services or construction, it must analyze and engage the market to determine who is able to provide the service and to choose the appropriate solicitation strategy. The choice of procurement strategy and tools depends on the complexity, value, risks and circumstances of the opportunity, as well as the availability and interest of potential suppliers. The procurement process can

ABOUT THE AUDIT

range from a directly awarded contract to a multi-stage process that involves gathering information from the supplier community, pre-qualifying suppliers and soliciting competitive bids or proposals.

Only in exceptional circumstances, which are defined in the CPPM, may a government entity directly award a contract to a supplier instead of pursuing a transparent and competitive approach. The five exceptional conditions allowing for the negotiation and direct award of a contract without a competitive process are as follows:

1. The contract is with another government organization.
2. The ministry can strictly prove that only one contractor is qualified, or is available, to provide the goods, services or construction, or is capable of engaging in a disposal opportunity.
3. An unforeseeable emergency exists and the goods, services or construction could not be obtained in time by means of a competitive process.
4. A competitive process would interfere with a ministry's ability to maintain security or order or to protect human, animal or plant life or health.
5. The acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to the public interest.

One or more of these conditions must be met if a direct award is to proceed.

In addition to those conditions, the CPPM requires organizations to issue a Notice of Intent when a contract valued at over \$10,000 for goods or over \$50,000 for services is to be directly awarded on the basis that there is only one supplier who can provide the required goods or services.

A Notice of Intent is not required if it is determined that the direct award meets one or more of the allowable exceptions specified in policy 6.3.3.a(1).

Source: CPPM 6.3.2

A Notice of Intent, publicly posted on BC Bid, respects the principle of transparency when competition is not possible for exceptional reasons. A Notice of Intent not only provides transparency in public sector business, but also provides an opportunity for competitors to object to the direct award and perhaps offer an alternative.

When any government organization contemplates negotiating and directly awarding a contract without a competitive process, the CPPM requires that the rationale or the circumstances that support the organization's decision be documented in the contract file. The documentation must remain part of the contract file and be available when requested for review or audit purposes. Ministries are also required to make public their direct awards. The LDB's most recent listing of direct awards is at this [Open Government link](#).

ABOUT THE AUDIT

In addition to this disclosure, government total payments to suppliers and contractors in excess of \$25,000 are listed each year in the public accounts of the province. See supplier listings starting on page 375 at this [link](#).

Procurement at the LDB

Our office regularly audits procurement and contract management within government organizations. The scope of these audits can range from a single contract ([An Audit of the Contract for the Family Maintenance Enforcement Program](#)), to a group of contracts ([Receiving Value for Money from Procured Professional and Advisory Services](#)), to procurement practices in a particular sector ([An Audit of Mid-Size Capital Procurement in Post-Secondary Institutions](#)).

The LDB's mission is to be a responsible wholesaler and retailer of liquor and cannabis. Competence in procurement and contract management is critical to the success of the LDB as a buyer of liquor and cannabis in the marketplace.

The LDB is a unique operation of government. It operates BC Liquor retail stores, runs one cannabis store and manages wholesale commerce in liquor and online sales of non-medicinal cannabis for the Province of British Columbia under the *Liquor Distribution Act* and under the *Cannabis Distribution Act*. In addition to buying, handling and reselling these products, the LDB procures goods, services and construction to support its business operations. For example, warehouses have to be constructed, IT systems need to be maintained and expert advice may be needed for new projects.

Since 2016, the LDB has spent approximately \$100 million annually on contracts to support business operations, not including direct spending to purchase liquor and cannabis products. We chose to focus our audit on the contracts that the LDB directly awarded to support its business operations.

We selected the audit criteria from government's CPPM. The CPPM sets out government's objectives, standards and directives for sound management and promotes consistent, prudent financial management practices. The CPPM contains the objectives for government's procurement of goods, services and construction, which are based on the principles of fair and open public sector procurement. We selected 15 requirements from the CPPM that relate to directly awarded contracts, and assessed the documentation in the contract files against these requirements (see [Appendix B](#)).

AUDIT SCOPE AND METHOD

In October 2018, at the LDB's head office, we examined 74 contract files for contracts to support LDB business operations that were directly awarded between April 2016 and July 2018. We examined the documentation in the contract files and assessed the extent to which the contents of files complied with the 15 requirements of the CPPM.

ABOUT THE AUDIT

We met with LDB staff who are responsible for procurement. They assured us that the contract files they gave us had all of the documentation available to support the contracts and the decisions to directly award (i.e., no other files with additional information existed).

Contracts for the supply and distribution of liquor and cannabis products were outside the scope of this audit. We did not audit the LDB's procurement processes and we did not audit procurement planning in the LDB's business units.

The report is dated June 26, 2019. This is the date the audit team completed obtaining the evidence used to determine the findings and conclusions of the report.

AUDIT OBJECTIVE AND CONCLUSION

AUDIT OBJECTIVE

Our objective was to determine whether the BC Liquor Distribution Branch's (LDB's) directly awarded contracts to support business operations were issued in compliance with procurement policies set out in the *Core Policy and Procedures Manual (CPPM)*.

AUDIT CONCLUSION

Based on our review of 74 contract files, the LDB's directly awarded contracts to support business operations, with a few exceptions, were not issued in compliance with procurement policies and procedures as set out in the CPPM.

We did not find adequate documentation in 55% of the directly awarded contract files to demonstrate that the LDB complied with the CPPM's requirements. In all of these instances, the LDB's signed approvals in the contract files were not supported by documentation that clearly demonstrated how the exceptional conditions for a direct award existed. As a result, the files did not demonstrate that the practices met government's objectives for procurement based on principles of fairness and competition, transparency, accountability and value for money.

KEY FINDINGS AND RECOMMENDATIONS

WE AUDITED CONTRACT files for 74 of the BC Liquor Distribution Branch's (LDB's) directly awarded contracts over a period of 28 months. Most of the directly awarded contracts were for IT services. Of the 74 contracts we looked at, 67 were valued at a total of approximately CAD\$24 million and 7 were valued at a total of approximately USD\$646,000 (see [Appendix C](#)).

We looked to see if the LDB's contract files included evidence to demonstrate compliance with relevant requirements of the CPPM procurement policies (see [Appendix B](#)).

We found that a Notice of Intent to directly award a contract was issued for nine of the 74 contracts we examined. Of the remaining 65 contracts, the most common rationale provided to support the direct award was that only one contractor was capable or available to provide the goods or services. Exhibit

1 provides a summary of the 65 directly awarded contracts for which a Notice of Intent was not issued, and the reason for the direct award.

Overall, we found that nine of the 74 contract files were reasonably compliant with the expectations and requirements of the CPPM. A Notice of Intent was issued for only two of these nine contracts. However, we found the remaining 65 files did not meet one or more of the 15 CPPM requirements related to direct awards.

Exhibit 1: Summary of 65 directly awarded LDB contracts

Justification for direct award (as defined in the CPPM)	Number of directly awarded contracts
Intention to contract with another government organization	1
Able to strictly prove only one contractor was capable of providing the goods or services	46
Unforeseeable emergency	11
A competitive process would interfere with the organization's ability to maintain security or order or to protect human, animal or plant life or health	0
Acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to public interest	2
Contract is valued under \$25,000 and not thought reasonable or cost-effective to procure competitively	5

Source: Office of the Auditor General of British Columbia, based on data provided by the Liquor Distribution Branch

KEY FINDINGS AND RECOMMENDATIONS

The key areas of weaknesses included:

- ◆ reasons for decision to directly award a contract did not always demonstrate that exceptional circumstances, as defined in policy, existed
- ◆ documentation did not clearly demonstrate that a contractor had not received impartial or non-preferential treatment
- ◆ government-approved form of contract was not always used
- ◆ cost-benefit analysis to support the need for contracts was not documented
- ◆ no evidence that corporate supply arrangements were considered before contracts awarded

The CPPM requires that executive financial officers be accountable for the overall performance and effectiveness of financial administrative systems. This responsibility includes periodically reviewing procurement and other systems for compliance with policy.

Responsibility for procurement has been moved several times within the LDB over the last few years. With organizational changes, there is a risk that staff may not adequately understand the policy requirements for procurement and the chief financial officer's responsibility for oversight of procurement systems.

Historically, the finance department at the LDB has been responsible for oversight of procurement, but for a period this activity became the responsibility of the legal services department at the LDB. In 2017 responsibility was returned to the finance department, and in August 2018 it was reassigned to corporate strategic services.

When the finance department took over responsibility, the chief financial officer initiated an independent review of procurement processes. The purpose of the review was to identify opportunities to improve operational and process efficiency and effectiveness, organization structure, resource capacity, internal controls, and systems and tools. While this review was outside the scope of our audit, it did provide advice on how to improve procurement processes and increase the value of procurement.

Reasons for direct award decision did not always demonstrate that exceptional conditions existed

What is a direct award justification?

Competition is a key principle of public sector procurement because it promotes fair and equitable access to government contracts, enables government organizations to demonstrate that the prices being paid are competitive, and ultimately supports the goal of best value for money. Consequently, the CPPM's procurement policies promote fair and open procurement and define a few limited and exceptional circumstances in which a ministry may directly award a contract opportunity—without competition.

If a ministry determines that a direct award is necessary, government policy requires that the contract file include documentation to demonstrate the exceptional circumstances that justify the direct award.

KEY FINDINGS AND RECOMMENDATIONS

As a support, government has created a direct award justification (DAJ) form for organizations to document the exceptional circumstances justifying the direct award. The contract file should contain documentation to support why the exceptional circumstances exist and to consider any alternative approaches to support the principles of fair and open procurement. Good documentation of the rationale to directly award is important to provide a basis for approval and sign-off of the award by management.

What were we looking for?

We looked for a DAJ form in each file. We also looked to see if LDB staff had documented the exceptional circumstances that existed, and any alternative approaches considered, to support the approval of a decision to directly award the contract.

What did we find?

We found a completed DAJ form in a majority of the files. Just four files were missing this form when we conducted our file review. The LDB later sent us these forms.

A direct award rationale and supporting documentation must be sufficient to demonstrate how the direct award meets the requirements of the CPPM and why a competitive process is not possible in the circumstances. We found that in 41 (or 55%) of the 74 contract files we examined, the direct award reasons for decision stated in the DAJ form were not supported by information that clearly demonstrated the existence of exceptional conditions as required by the CPPM.

An example of a contract that did not meet this expectation is the LDB's procurement of promotional items to give its staff at its annual staff appreciation day. The organizers of the event decided to distribute promotional items to the staff with the LDB logo printed on them. By the time the LDB considered this decision, there was not enough time remaining to procure competitively, so the LDB justified the direct award as an emergency to meet its deadline. The value of the contract was \$57,000.

When an event is annual, it is predictable; therefore, the LDB's classification of this direct award as an emergency does not meet the expectations of the CPPM. A reasonable amount of procurement planning, as is required by the CPPM, could have prevented the need for this direct award.

Why does what we found matter?

Direct awards are exceptions to the principles of fair and open public sector procurement and are intended to be used only under exceptional circumstances. For this reason, CPPM requires that the contract file include documentation of the exceptional circumstances that exist to support the decision to directly award a contract.

RECOMMENDATION 1: *We recommend that the LDB require all staff involved in procurement or contract management to complete public sector procurement and contract management training.*

KEY FINDINGS AND RECOMMENDATIONS

Impartial and non-preferential treatment was not adequately demonstrated

What is impartial and non-preferential treatment?

The CPPM requires ministries to not favour or grant preferential treatment to any prospective contractor. This requirement is consistent with the principles of fair and open public sector procurement: competition, demand aggregation, value for money, transparency and accountability. Further, the legal environment for public sector procurement creates a duty for government to conduct a fair competition (see [Appendix A](#)).

What were we looking for?

We looked for evidence that the LDB's practices were neutral and non-preferential when selecting suppliers of goods or services. If a contractor was preferred, we looked for persuasive reasons why that preference was justified. We looked to see if the LDB used objective methods to source potential suppliers. In the case of repeat contractors, we looked for documentation of their previous performance as evidence of the decision to consider them a potential supplier for the new opportunity.

Where the LDB expressed preference to continue with a contractual relationship or particular product or service, we looked for evidence that a competitive process had been considered or that a Notice of Intent had been contemplated. In the case of proprietary equipment or resources, we expected to see some

evidence in the contract file that the LDB had confirmed that no alternative sources of that product or service existed or were available.

What did we find?

For the majority of the directly awarded contracts we reviewed, the documentation in the contract files justified the decision to directly award on the basis that only one contractor was capable of providing the goods or service. Of the 74 files we reviewed, 20 contained adequate documentation to demonstrate that the LDB had taken care to show it was not bestowing a favour or granting preferential treatment to a single contractor. The remaining 54 files (73% of the total) did not contain sufficient documentation to demonstrate impartial and non-preferential treatment.

If a ministry goes through a competitive process to award a contract, but, a few years later, decides to significantly expand the scope of the contract with the incumbent contractor, it may find itself offside of procurement policies. If the contract opportunity changes significantly, it is possible that other suppliers may be interested, and a decision to extend or amend the contract with an incumbent will not meet the test of fair and open procurement.

One contract file we examined—an eight-year contract valued at \$8.5 million for retail systems software and associated professional services—was amended to increase the maximum value to \$14.2 million. This proposed change to the contract was not competed (i.e., the LDB did not consult the market). As a result, the LDB could not demonstrate that the enhancements needed under the contract, and the

KEY FINDINGS AND RECOMMENDATIONS

higher cost, represented good value for money. There was also no analysis in the contract file to show the supplier was the only source for the product type. And although the incumbent contractor had been selected through a competitive process in 2000, the LDB did not adequately document the reasons why a competitive process for the new and expanded contract was not an option. Further, the LDB did not provide sufficient evidence that only one contractor was suitable.

Why does what we found matter?

Direct awards to incumbent and familiar contractors may be expedient, but that approach does not meet the expectations of the CPPM, the principles of fair and open procurement, or the government's obligations under trade agreements.

If an organization expands the scope of work from what it originally competed, it needs to go back to the market. Government policy requires that contract modifications not change the nature and intent of the opportunity that was originally advertised. If an opportunity significantly changed from what was advertised, it would be unfair to potential suppliers who might have responded but didn't, or would have responded differently had they known the true contract scope.

RECOMMENDATION 2: *We recommend that the LDB document, in the contract file, the exceptional conditions permitting a contract to be directly awarded, including reasons that clearly demonstrate why competition was not possible.*

Government-approved service agreement templates were not always used for service contracts

What were we looking for?

The CPPM requires that all service contracts be made in the contractor's legal name and that one of three government-approved service agreement templates be used. No changes to a service agreement template should be made unless the organization's legal counsel has prepared, or advised on, the changes.

The CPPM recognizes that some contractors prefer to use their own standard contract forms. This is acceptable if the forms meet government requirements and have been reviewed by the organization's legal counsel. The service agreement templates include specific terms and conditions to protect the interests of the province, which is why any changes must be prepared, or reviewed, by legal counsel. Evidence of consultation with legal counsel should be documented in the contract file.

We looked to see if contracts were made in the contractor's legal name. For service contracts, we looked to see if the LDB used one of the three government-approved service agreement templates. Lastly, we looked for evidence of review by legal counsel when a service agreement template was modified or if an alternative contract template was used.

KEY FINDINGS AND RECOMMENDATIONS

What did we find?

We found that all of the contracts we reviewed were made in the contractor's legal name. We found nine cases in which a purchase order was used to acquire items defined by the LDB as goods: cooling racks and maintenance on software. Although appropriate for these acquisitions, purchase orders should be referenced to the main contract. Further, we noted four cases where a purchase order was used instead of a government-approved service agreement for contracts that included both goods and professional services.

We found one instance where the contractor's form of contract was used as the basis for a contract for the supply and management of retail gift cards available for customers to purchase at LDB stores. For a nine-year contract, valued at \$1.35 million, there was no documentation in the contract file to support that legal counsel had reviewed the contract and confirmed that it met government requirements. The terms and conditions were quite different from the standard terms and conditions included in the service agreement templates. One clause in the contract stated that the governing law for the contract was the jurisdiction of Ontario.

Review of significant contracts by senior financial staff and legal counsel, particularly when non-standard forms of contract are used, is important to identify potential financial and legal risks before contracts are signed. We saw evidence of regular review by senior financial staff, but the files we reviewed didn't include notes indicating whether the LDB had obtained legal advice. Although there was no documentation of legal review in the contract files, the LDB informed us that legal counsel is consulted on procurements.

Why does what we found matter?

Standard contract templates have been developed with legal advice and include terms and conditions to protect the interests of the province. When an organization does not use a government-approved template and does not involve legal counsel in preparing or reviewing non-standard contract language, there is a risk that the contract will be difficult to manage and put public funds at risk.

RECOMMENDATION 3: *We recommend that the LDB require legal review of any non-standard terms or forms of contract, and include evidence of this review in the contract file.*

No documentation of cost-benefit analyses

What is a cost-benefit analysis?

A cost-benefit analysis is a tool that helps inform decision making. A cost-benefit analysis can include a comparison of the cost of contracting out with the cost of providing the services in-house with available resources, or it can compare the costs and benefits of various contracting alternatives.

What were we looking for?

For service contracts greater than \$100,000, the CPPM requires that ministries develop a cost-benefit justification for the contract before taking any steps to find a contractor. The analysis should include, where appropriate, a comparison of the cost of contracting out with the cost of providing the service in-house if the resources are available.

KEY FINDINGS AND RECOMMENDATIONS

Most government organizations use a standard cost-benefit summary template to capture this analysis. We expected to find a completed form or similar documentation in the file for service contracts valued at over \$100,000 that had been directly awarded.

What did we find?

We found that, for the 19 directly awarded service contracts valued at more than \$100,000 we reviewed, there was no documentation of any cost-benefit analysis in the contract files to support the justification for the contract.

Why does what we found matter?

A cost-benefit analysis is a common method for systematically considering alternative solutions to a problem or need. Using it in procurement planning greatly lowers the risk that only one solution or supply source is considered. Analyses may identify potential opportunities for going to the market for the services or providing the service in-house. Any analysis done should be recorded in the contract file to demonstrate support for the decision to contract for the services.

RECOMMENDATION 4: *We recommend that the LDB prepare a cost-benefit analysis for any planned service contract valued at more than \$100,000 and include this documentation in the contract file.*

No evidence that the LDB checks for corporate supply arrangements

What is a corporate supply arrangement?

Government negotiates corporate supply arrangements (CSAs) when it perceives that a demand for a good or service exists across many government bodies and will periodically repeat. In these cases, government negotiates in the open market for suppliers now and going forward to cover the demands for a set price.

For example, from time to time, government computing networks need vulnerability assessments performed by an independent agency to test their ability to withstand attack. There are 14 CSAs for government IT managers to choose from when the need for such an assessment arises. Government buying power is leveraged through such arrangements, but only realized when organizations comply with the CPPM by using existing CSAs to meet their program requirements.

What were we looking for?

The CPPM requires that ministries use existing CSAs instead of procuring the goods or services covered by the CSA on their own. We expected to find documentation in the contract file demonstrating that LDB staff had looked for the existence of a CSA to meet the LDB's needs before determining that a contract was necessary.

KEY FINDINGS AND RECOMMENDATIONS

What did we find?

We found there was no documentation in any of the files to indicate that the LDB had checked for the existence of a CSA before issuing a direct award.

Why does what we found matter?

Government buying power is leveraged through these arrangements, but only realized when organizations comply with the CPPM and use existing CSAs to meet their program requirements.

The LDB should use CSAs when the CSAs can meet a need for goods or services. The LDB's decision not to use a CSA should be documented in the contract file.

RECOMMENDATION 5: *We recommend that the LDB require staff who are involved in procurement to check for an existing corporate supply arrangement (CSA) before entering a new contract for goods or services, and document, in the contract file, any reasons for not participating in an established CSA.*

AUDIT QUALITY ASSURANCE

WE CONDUCTED THIS audit under the authority of section 11(8) of the *Auditor General Act* and in accordance with the standards for assurance engagements set out by the Chartered Professional

Accountants of Canada (CPA) in the *CPA Canada Handbook – Assurance Canadian Standard on Assurance Engagements (CSAE) 3001* and *Value-for-money Auditing in the Public Sector PS 5400*. These standards require that we comply with ethical requirements and conduct the audit to independently express a conclusion on whether or not the subject matter complies in all significant respects to the applicable criteria.

The office applies the CPA Canadian Standard on Quality Control 1 (CSQC) and, accordingly,

maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements. In this respect, we have complied with the independence and other requirements of the code of ethics applicable to the practice of public accounting issued by the Chartered Professional Accountants of BC that are founded on the principles of integrity, objectivity and professional competence, as well as due care, confidentiality and professional behaviour.

APPENDIX A: THE LEGAL ENVIRONMENT FOR PUBLIC SECTOR PROCUREMENT

THE LEGAL ENVIRONMENT for public sector procurement is complex. It includes legislation enabling the purchase of goods and services, legislation that governs the spending of public funds, trade agreement commitments, and the framework of appropriate practices defined by common law. Exhibit 2 provides an overview of these elements.

Exhibit 2: The legal environment for B.C. public sector procurement	
<i>Financial Administration Act</i>	Governs the spending of provincial funds and provides authority for Treasury Board to set policy (<i>Core Policy and Procedures Manual</i>) for government procurement and contracting.
Ministry Legislation	Ministerial authority to enter into contracts derives from enabling ministry legislation (e.g., the LDB's authority to contract for goods and services comes from the <i>Liquor Distribution Act</i> , legislation administered by the Ministry of Attorney General).
Canadian Common Law	The common law, as established through a series of court decisions and legal precedents, defines the broad parameters for procurement in Canada. For example, court decisions have implied a contractual duty of fairness and good faith on the purchaser, such as a duty to provide proper disclosure, a duty to conduct a fair competition and a duty to award the contract as tendered.
Trade Agreements	The Province of British Columbia is a signatory to a number of trade agreements that define obligations for provincial procurement opportunities and practices. For example, the Agreement on Internal Trade is a domestic trade agreement that commits provinces and the federal government to support fair and open competition on opportunities over threshold amounts by advertising them nationally.

Source: Office of the Auditor General of British Columbia: [An Audit of the Contract for the Family Maintenance Enforcement Program](#)

APPENDIX B: SELECT CPPM REQUIREMENTS

THIS AUDIT DETERMINED whether the contracts directly awarded by the LDB were issued in compliance with procurement policies and procedures set out in the CPPM. A number of requirements from the CPPM, specific to direct awards, informed the following audit questions:

1. For service contracts greater than \$100,000, did the LDB prepare a cost-benefit justification for the contract? (CPPM 6.3.1(5))
2. Where a contract for the continuation of a service was directly awarded, and the requirements have changed from those provided under an initial contract, did the LDB update the original justification or provide a new justification? (CPPM 6.3.1(6))
3. Has the LDB taken care to document reasons for decision that clearly demonstrate it has not bestowed a favour on, or granted preferential treatment to, any contractor with whom they have directly awarded a contract? (CPPM 6.3.1(11))
4. Has the LDB taken care to ensure it has not directly awarded a contract to acquire goods or services that are currently available through a corporate supply arrangement? (CPPM 6.3.2(1))
5. Has the LDB taken care not to retroactively extend a directly awarded contract when it has expired? (CPPM 6.3.2.a(11))
6. When a directly awarded contract has expired, and the original deliverables have not been fully met and a new contract was awarded, did the LDB include consideration of the evaluation of the first contract? (CPPM 6.3.2.a(11))
7. Was a Notice of Intent to directly award the contract, when required, posted on BC Bid? (CPPM 6.3.2.b(5) and c(7))
8. Were all objections to the Notice of Intent received by the response date reviewed? (CPPM 6.3.2.b(5) and c(7))
9. If any of the objections to the Notice of Intent were found to be substantiated, was a competitive process undertaken? (CPPM 6.3.2.b(5) and c(7))
10. Did the LDB take care to document reasons for decision that clearly demonstrate the existence of exceptional conditions as per CPPM prior to directly awarding the contract? (CPPM 6.3.3.a(2))
11. Was the rationale for directly awarding the contract appended to the contract file? (CPPM 6.3.3.a(2))
12. Are the directly awarded contracts in writing and signed? (CPPM 6.3.3.e(2))
13. Were the directly awarded contracts made in the contractor's legal name? (CPPM 6.3.3.e(3))
14. As applicable, has the LDB used one of the three government-approved service agreement templates to contract for services? (CPPM 6.3.3.e(4))
15. If changes to the approved templates have been made, or an alternative contract template has been used, were they prepared by, or with advice from, the ministry's legal counsel? (CPPM 6.3.3.e(5) and e(7))

APPENDIX C: LDB DIRECT AWARDS EXAMINED

THE FOLLOWING IS A LIST of the direct awards we examined during audit fieldwork, sorted by start date of the contract, and based on information provided by the LDB.

Contractor	Contract value (\$)	Description of work and start date
The Deetken Group	70,000.00	Professional financial consulting services. Start date: 4/01/2016
0853784BC Ltd. (dba Macatee Management)	25,000.00	Advisory services. Start date: 4/04/2016
Corporate Insights Inc.	53,750.00	To conduct an additional wholesale customer satisfaction survey for spring 2016. Start date: 4/04/2016
Gartner Inc.	72,700.00	Membership subscription (access to proprietary expert research and analysis). Start date: 4/25/2016
PricewaterhouseCoopers LLP	18,000.00	Professional consulting services for subject matter expertise for KPI analysis. Start date: 5/02/2016
Sierra Systems	24,800.00	Professional services to identify and quantify non-functional requirements for the Oracle eBusiness upgrade. Start date: 5/16/2016
NEC Canada Inc.	80,100.00	NEC annual server maintenance renewal. Start date: 6/05/2016
Panaya Ltd.	107,350.00	Subscription to cloud-based software-as-a-service solution that automates Oracle upgrades. Start date: 6/17/2016
Impac Canada Co.	50,000.00	Oracle financial functional SME services. Start date: 7/01/2016
Hewlett Packard Canada	395,870.23	Maintenance renewals on HP blade servers and 3PAR support. Start date: 7/01/2016
MSR	104,973.00	MSR software licence and maintenance to electronically submit Canada customs coding. Start date: 7/01/2016

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Contractor	Contract value (\$)	Description of work and start date
Tier 5 Systems Ltd.	65,253.95	Maintenance renewal for cooling racks. Start date: 7/01/2016
341234 B.C. Ltd. (dba Microserve)	62,400.00	Business analyst for the PD remittance initiative. Start date: 7/04/2016
AMPM Mobile Solutions	9,216.00	Cloud-based mobile device management (MDM) hosting services. Start date: 7/06/2016
Givex Canada Corp.	450,000.00	Gift card production, fulfilment and data support. Start date: 7/12/2016
SmartDog Services, LLC	(US) 75,000.00	Advisory software services. Start date: 7/18/2016
Sparkle Consulting Services Ltd.	70,980.00	Oracle eBusiness developer for the PD remittance initiative. Start date: 7/19/2016
S.i. Systems	87,780.00	Trainer and content developer. Start date: 7/25/2016
7513836 Canada Inc.	68,250.00	Oracle eBusiness developer. Start date: 8/08/2016
Zoftec, LLC (dba Veras Retail)	700,000.00	Ongoing professional services to JDA Store proprietary POS software system. Start date: 8/11/2016
Chartered Professional Accountants of British Columbia (CPABC)	12,000.00	To conduct CPABC training seminars at the LDB. Start date: 9/06/2016
CA Canada Company	283,798.00	Software support required for CA Technologies product, including CA identity management for business users. Start date: 10/01/2016
AC Nielsen Company of Canada	107,000.00	Two additional Spaceman Professional application software licences, and the annual software maintenance and technical support. Start date: 11/01/2016
Gerry Humphries Consulting Inc. (dba Western Management Consultants)	123,200.00	Continuation of financial business transformation architectural advice to the LDB. Start date: 11/07/2016

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Contractor	Contract value (\$)	Description of work and start date
Spice Technology Group Inc.	100,000.00	Ongoing sustainment of the customized merchandise financial planning toolset. Start date: 11/07/2016
Accellos Canada Inc.	56,715.00	Fifty-seven additional Radio Beacon software licences. Start date: 12/28/2016
Resolver Inc.	207,870.00	Commercial off-the-shelf cloud-based software to streamline and enhance the process, reporting and oversight of regulatory compliance, assurance and risk management programs. Start date: 1/01/2017
Source Display Inc.	400,000.00	Supply and delivery of proprietary liquor display gondola and perimeter shelving system. Start date: 1/18/2017
Optimus Information Inc.	412,640.00	Immediate provision of senior resources for test lab technical and architectural assistance. Start date: 1/23/2017
go2 Tourism HR Society (dba go2HR)	150,000.00	Serving it Right (SIR) training certification and recertification fees. Start date: 2/01/2017
MacDougall Ross Retail Services Inc.	75,000.00	To complete the transformation realignment of the finance department's reorganization on an "as and when requested" basis. Start date: 3/01/2017
Gartner Inc.	286,170.00	Membership subscription renewal for Gartner research, advisory services for the information services department. Start date: 4/01/2017
Gartner Inc.	370,303.00	Membership subscription renewal for Gartner research, advisory services for the wholesale operations department. Start date: 4/01/2017
Eaton Industries (Canada) Company	16,330.00	Annual renewal of hardware maintenance for uninterrupted power supply. Start date: 4/01/2017
Inteplast Bags and Films Corporation	300,000.00	To continue the provision of BC Liquor Store-branded plastic bags without interruption. Start date: 4/01/2017
Automic Canada Logiciels Inc.	220,400.00	Renewal of licences and maintenance for Dollar Universe workload automation. Start date: 4/01/2017

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Contractor	Contract value (\$)	Description of work and start date
West Pacific Consulting Group Managed Services Ltd. (dba IT IQ Tech Recruiters)	231,840.00	To continue the professional program management services to carry out and conclude project management duties associated with the Enhance Program (formerly RAPP). Start date: 5/01/2017
N8 Identity Inc.	100,000.00	To continue the services for ongoing enhancements, sustainment and support of the LDB's Identity and Access Management system. Start date: 5/10/2017
Express Data Ltd.	24,000.00	To continue data entry services to support approximately 20 industry on-site winery stores. Start date: 7/01/2017
SmartDog Services, LLC	(US) 75,000.00	Oracle advisory software services "as and when required" for licensing knowledge, strategic planning and risk avoidance. Start date: 8/01/2017
Rookery Software	(US) 19,440.00	Purchase of perpetual software, a PC-based tool that will assist in specific Oracle production and associated environments. Start date: 8/22/2017
Talend Inc.	293,663.24	Renewal of the current proprietary software subscription with supplemental purchase for Talend master data management (MDM) platform. Start date: 9/21/2017
TallSky Consulting Group Inc.	30,000.00	Professional classification services to continue the wholesale and retail restructuring as a result of changes in the liquor policy in BC. Start date: 9/25/2017
Graphic Packaging	22,165.00	Supply and delivery of six-pack cardboard holders to all BC Liquor Stores. Start date: 10/13/2017
New Creation, LLC (dba ProPAAS)	(US) 5,000.00	Professional services as an interim solution to urgent Postgres support. Start date: 10/16/2017
Belfor (Canada) Inc.	27,317.40	Emergency remediation services for water damage. Start date: 10/16/2017

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Contractor	Contract value (\$)	Description of work and start date
Intergalactic Agency Inc.	20,000.00	Short-term extension to continue professional support and services for web/mobile/e-Business applications. Start date: 11/01/2017
Omicron Interiors Ltd.	49,000.00	Interior design services to accommodate the 126+ full-time employees that will be integrated into 2625 Rupert. Start date: 11/15/2017
Forrester Research Inc.	387,000.00	Amendment #1 to exercise the two-year membership renewal for IT advisory services and access to Forrester white papers. Start date: 12/01/2017
GF Bunzl Canada Inc.	585,261.00	Design, supply and installation of pallet wrappers at the distribution centre in Delta. Start date: 12/11/2017
Diversified Personal Delivery Services	5,000.00	Provision of shopping cart retrieval services for BC Liquor Stores. Start date: 12/18/2017
Cognizant Technology Solutions Canada Inc.	75,000.00	Provision of immediate eBusiness development services on the LDB's warehouse management solution implementation project. Start date: 1/01/2018
341234 B.C. Ltd. (dba Microserve)	231,840.00	Senior business analyst consulting services for the upcoming e-retail project. Start date: 1/01/2018
QBD Cooling Systems Ltd.	200,000.00	Provision of cooling units for the BC Liquor Stores. Start date: 1/01/2018
Trans Canada Labels	30,000.00	To continue the supply of labels for up to six months during the relocation to the new Delta warehouse. Start date: 1/01/2018
Inland Kenworth	95,000.00	Provision of Kenworth truck repairs and maintenance of the LDB distribution truck fleet. Start date: 1/01/2018
Guelph Twines Ltd.	62,500.00	To continue the supply of twine for all LDB distribution centres for up to three months while a solicitation process is conducted. Start date: 1/01/2018

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Contractor	Contract value (\$)	Description of work and start date
JDA Software	14,224,036.00	Upgrade to JDA proprietary software system over eight-year time frame. This includes software licensing and implementation services. Start date: 1/01/2018
Cherry's Industrial Equipment Corporation	(US) 254,476.90	Supply, installation and commissioning of six pallet dispensers for the new Delta distribution centre. Start date: 1/09/2018
Annex Consulting Group Inc.	229,320.00	Senior change management consulting services to continue to provide quality change management solutions for the multiple projects. Start date: 2/05/2018
Citrix Systems Inc.	(US) 67,080.00	Annual software maintenance and support renewal for proprietary Citrix software products. Start date: 3/23/2018
Anisoft Group Inc.	169,520.00	IBM V7000 and three-year maintenance and support renewal for proprietary IBM products. Start date: 3/30/2018
TEKsystems Canada Inc.	167,076.00	Services of an SQL database administrator. Start date: 4/03/2018
Staples Advantage	450,000.00	Six-month extension to the current cleaning and office supplies agreement for the LDB head office and retail stores. Start date: 4/08/2018
Arpac Storage Systems Corporation	24,701.00	Supply and delivery of a layer picker. Start date: 4/16/2018
Genumark Promotional Merchandise Inc.	57,226.00	Supply and delivery of products purchased for the government-wide Public Service Week event. Start date: 4/30/2018
Grata Construction Management Ltd.	13,500.00	Urgent repair services to a damaged main water-valve cover located in the middle of the Delta distribution centre driveway. Start date: 5/01/2018
Telus Communications Company	109,397.00	Customized PC equipment for the cannabis office and distribution centre. Start date: 5/02/2018

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Contractor	Contract value (\$)	Description of work and start date
Oracle Canada ULC	268,157.82	Oracle licence migration, support and fusion procurement service fees. Start date: 5/11/2018
The Integrated Group, LLC	(US) 150,000.00	Third-party professional services for JDA Enterprise Store Operations and Strategic Pricing. Start date: 5/14/2018
Stag Dubh Services Inc.	75,000.00	Subject matter expertise for the corporate loss prevention applications upgrade project. Start date: 5/16/2018
ACCEO Solutions Inc.	75,000.00	Professional services to ensure secure processes to receive payments from systems. Start date: 5/21/2018
Upaknee Inc.	37,000.00	To continue the contract for vendor's software-as-a-service solution in order for the LDB to remain compliant with Canadian anti-spam legislation. Start date: 6/15/2018
TEKsystems Canada, Inc.	43,705.00	Professional services agreement for consulting services related to store operations. Start date: Not available



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