



# **Aboriginal Affairs and Northern Development Canada**

## **Internal Audit Report**

### **Audit of Exceptional Contracting Limits Authority**

**Prepared by:**

**Audit and Assurance Services Branch**

**Project #: 14-21**

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## ACRONYMS

|       |  |
|-------|--|
| AANDC | Aboriginal Affairs and Northern Development Canada |
| CD    | Crown Deponent                                     |
| CFN   | Chief Federal Negotiator                           |
| ECLA  | Exceptional Contracting Limits Authority           |
| EW    | Expert Witness                                     |
| LMRB  | Litigations Management and Resolution Branch       |
| SRCL  | Security Requirements Check List                   |
| TAG   | Treaties and Aboriginal Governments                |

# EXECUTIVE SUMMARY

## ***Background***

Treasury Board approved the Exceptional Contracting Limits Authority (ECLA) for the Minister of Aboriginal Affairs and Northern Development (AANDC) to enter into and renew non-competitive service contracts with Chief Federal Negotiators (CFN), Expert Witnesses (EW) and Crown Deponents (CD). The ECLA is renewed on a five-year basis and was extended by Treasury Board on March 15, 2012. The current ECLA expires on March 31, 2017.

An *Audit of Exceptional Contracting Limits Authority* was included in the AANDC revised 2014-2015 to 2016-2017 Risk-Based Audit Plan, approved by the Deputy Minister on September 26, 2014. The *Audit of Exceptional Contracting Limits Authority* is a condition of the Treasury Board Secretariat and is performed on a three-year cyclical basis. The previous audit of ECLA was conducted in August 2011.

## ***Audit Objective and Scope***

The objective of the audit was to

- assess the adequacy and effectiveness of controls in place to support the efficient and effective, management of the ECLA within AANDC; and,
- determine whether the exceptional contracts entered into from April 1, 2011 to March 31, 2014 were executed in compliance with exceptional contracting regulations and guidelines from Treasury Board and AANDC.

The scope of the audit included an examination of the governance and control practices in place to ensure that the Department's objectives with respect to the ECLA were met.

The audit used a risk-based approach to examine a sample of contracts (15 total) and contract amendments (25 total) issued under the ECLA, selected from Regions and Sectors for the period April 1, 2011 to March 31, 2014.

SAP, which became the departmental financial system on April 1, 2014, was not included as part of the scope of this internal audit.

## ***Statement of Conformance***

This audit conforms to the *Internal Auditing Standards for the Government of Canada*, as supported by the results of the quality assurance and improvement program.

## ***Observed Strengths***

Throughout the audit fieldwork, the audit team observed examples of how controls are properly designed and applied effectively by AANDC. This has resulted in several positive findings as follows:

- The Treaties and Aboriginal Government (TAG) “Selection and Review Guideline for Contract Federal Negotiators” and the Litigation Management and Resolution Branch (LMRB) ECLA Process Guide are made available to assist Managers, Team Leaders and staff to assist in managing the ECLA contracting mechanisms. Both these Guidelines have been updated to reflect the current exceptional contracting limits as permitted by Treasury Board;
- The performance of Contract Federal Negotiators is reviewed on an individual file by file basis and the information is used as one of the factors in determining whether to renew an existing appointment;
- Monitoring mechanisms are in place to ensure compliance with exceptional contracting limits, policies, and authorities;
- Files reviewed demonstrated evidence that the contract should be exempted from bid solicitation as permitted by the ECLA; and,
- With only a few exceptions, management actions have adequately addressed recommendations made in the August 2011 *Audit of Exceptional Contracting Limits Authority* (e.g. LMRB Desk Book, CFN Directory).

## **Conclusion**

Generally, the audit found that there are adequate and effective controls in place to support the efficient and effective management of ECLA and contracts are in compliance with the exceptional contracting regulations and guidelines from Treasury Board and AANDC. Opportunities for improvement were noted to strengthen management controls in the following areas: AANDC Procurement and Contracting Desk Guide and Program Guidelines; contract administration; and, delegated contracting authority approval.

## **Recommendations**

The audit identified areas where management control practices and processes could be improved, resulting in the following five recommendations:

1. The Chief Financial Officer should clarify in the AANDC Procurement and Contracting Desk Guide the contracting policy exceptions that apply to Exceptional Contracting Limits Authority and what is considered appropriate supporting documentation that allows work to commence prior to contract award.
2. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government and the Senior Assistant Deputy Minister of Policy and Strategic Direction should ensure that appropriate evidence of security clearance verification is obtained and retained on file prior to the commencement of contracts.
3. The Chief Financial Officer, working with the Senior Assistant Deputy Minister of Treaties and Aboriginal Government and the Senior Assistant Deputy Minister of Policy and Strategic Direction should ensure that all necessary requisition documentation

required to complete the award of a contract is received in a timely manner. In addition, all contracts should include key contract clauses.

4. The Chief Financial Officer, working with the Senior Assistant Deputy Minister of Policy and Strategic Direction, should ensure that all contracting authority approvals (i.e. FAA Section 41) are obtained prior to the contract start date.
5. The Chief Financial Officer should ensure that the Procurement Delegation of Authorities for Exceptional Contracting Limits Authority is only performed by individuals who hold the required delegation of authority.

### ***Management Response***

Management is in agreement with the findings, has accepted the recommendations included in the report, and has developed a management action plan to address them. The management action plan has been integrated in this report.

# 1. INTRODUCTION AND CONTEXT

## 1.1. Background

An *Audit of Exceptional Contracting Limits Authority* was included in Aboriginal Affairs and Northern Development Canada's (AANDC) revised 2014-2015 to 2016-2017 Risk-Based Audit Plan, approved by the Minister on September 26, 2014. The audit is a condition of the Treasury Board Secretariat requiring the Department to conduct an audit of Exceptional Contracting Limits Authority (ECLA) on a three-year cyclical basis. An internal audit of ECLA was conducted in August 2011.

Treasury Board, under the authority vested by the Governor in Council, is responsible to delegate the limits of contracting authority to federal government departments and agencies. These thresholds of contracting authority are set out in the Treasury Board *Contracts Directive* which is set out in the three parts:

- Basic Contract Limits – provided to AANDC, dependent on whether the contract is awarded as a result of an electronic bidding process, a traditional competitive process or on a non-competitive basis;
- Emergency Contracting Limits – set at \$1,000,000 to enable departments and agencies to award and amend a contract for emergency purposes where public health, safety or security is at risk; and,
- Exceptional Contracting Limits Authority – authorized by Treasury Board upon request from individual departments and agencies that need “exceptional” contracting authority to meet special operational requirements that cannot be met by using the “basic” contracting limits.

Treasury Board approved a submission from the Minister of AANDC for an ECLA in 2002 to enter into and renew non-competitive<sup>1</sup> contracts with: Chief Federal Negotiators (CFN) for claims, litigation and self-government negotiations; Crown deponents (CD), and expert witnesses (EW); and, water board activities in three territories. The ECLA is renewed on a five-year basis and was extended by Treasury Board on March 15, 2012. The current ECLA expires on March 31, 2017.

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<sup>1</sup> A contract where bids were not solicited or, if bids were solicited, the conditions of a competitive contract were not met

With respect to the ECLA, the Minister, AANDC has the authority to:

- enter into and amend non-competitive contracts up to a cumulative total value of \$1,500,000 for the duration of a contract for Chief Federal Negotiators/Representatives. Entry level approval limit to a maximum of \$500,000; amendments not to exceed \$500,000 in a 12-month period; and fees for professional services not exceed \$250,000;
- enter into and amend service contracts for the services of crown deponents and expert witnesses for AANDC litigation up to total cumulative value of \$600,000; and,
- enter into and amend service contracts of Crown Deponents (CD) and Expert Witnesses (EW) for AANDC litigation who are former public servants in receipt of a pension, up to a total cumulative value of \$225,000, with the following condition: entry level authority limit to a maximum amount of \$150,000, each amendment not exceed \$75,000, and all contracts must be subject to the application of the Treasury Board *Contracting Policy* with regards to the application of the fee abatement formula.

The Treasury Board directed AANDC to undertake a comprehensive audit of the ECLA on three-year cyclical basis and to undertake an annual review of the status of negotiations and the performance of Chief Federal Negotiators/Representatives under the ECLA and to submit reports to the Treasury Board Secretariat.

Within AANDC, the Treaties and Aboriginal Government (TAG) Sector is the lead sector for ECLA. The Sector is responsible for providing guidance and advice and coordinating all departmental requests for CFN appointments, renewals and amendments to appointments, and monitoring the related approval limits under this authority. The Litigation Management and Resolution Branch (LMRB) in the Policy and Strategic Direction Sector has the responsibility for coordinating the nomination of EWs and CDs pursuant to the ECLA for AANDC. This Branch/Sector is also responsible to implement and coordinate all contracts of EWs and CDs.

A separate AANDC contracting unit with the Chief Financial Officer Sector, Materiel and Assets Management Directorate, is responsible for procurement activities in the National Capital Region and Eastern Canada (Northwest Territories, Nunavut, Ontario, Quebec and Atlantic) and reports through the Director General of Corporate Accounting and Materiel Management. For Yukon, British Columbia, Alberta, Saskatchewan and Manitoba, contracts are under the responsibility of British Columbia Corporate Services, who reports to the British Columbia Region, under Regional Operations.

Organizationally, under AANDC's Program Activity Architecture, the ECLA is categorized under *The Government* Strategic Outcome within the Negotiations of Claims and Self-Government Agreements sub-program, under Aboriginal Rights and Interests Program.

Between April 1, 2011 and March 31, 2014, approximately \$16M was contracted using the ECLA.



## 2. AUDIT OBJECTIVE AND SCOPE

### 2.1 Audit Objective

The objective of the audit was to:

- assess the adequacy and effectiveness of controls in place to support the efficient and effective, management of the Exceptional Contracting Limits Authority within AANDC; and,
- determine whether the exceptional contracts entered into from April 1, 2011 to March 31, 2014 were executed in compliance with exceptional contracting guidelines from Treasury Board and AANDC.

### 2.2 Audit Scope

The scope of the audit included an examination of the governance and control practices in place to ensure that the Department's objectives with respect to the ECLA are met.

The audit used a risk-based approach to examine a sample of 15 contracts and 25 contract amendments issued under the ECLA for CFN, EW and CDs. This sample included contracts and contract amendments selected from Regions and Sectors for the period April 1, 2011 to March 31, 2014.

Based on the population of contracts and contract amendments with CFNs, EWs and CDs, a risk-based sample was selected using professional judgment and considered factors such as volume of contracts between Headquarters and the various Regions/Sectors, contract dollar value, number of new contracts within each fiscal year for each exceptional contract category and reasons given for contract amendments. The following table summarizes the sampling approach.

| Chief Federal Negotiators (CFN) | Expert Witnesses (EW)          | Crown Deponents (CD)           |
|---------------------------------|--------------------------------|--------------------------------|
| 6 new contracts                 | 6 new contracts                | 3 new contracts                |
| 9 contract amendments           | 8 contract amendments          | 8 contract amendments          |
| <b>Total : 15 CFN contracts</b> | <b>Total : 14 EW contracts</b> | <b>Total : 11 CD contracts</b> |

## 3. APPROACH AND METHODOLOGY

The audit was conducted in accordance with the requirements of the *Policy on Internal Audit* and followed the *Internal Auditing Standards for the Government of Canada*. The audit examined sufficient, relevant evidence to provide a reasonable level of assurance in support of the audit conclusion.

The principal audit techniques used included:

- Interviews with key management from TAG and LMRB, and Materiel and Assets Management Directorate and staff personnel;
- Review of relevant documentation related to the ECLA, including:
  - Policy guidance and operational procedures;
  - Table Management Plans; and,
  - Annual Report of Negotiation Tables.
- Detailed examination of a sample of 15 contracts and 25 contract amendments with CFNs, EWs and CDs to test compliance with the ECLA as described in the March 2012 Treasury Board Submission, the Treasury Board *Contracting Policy* and AANDC's Procurement and Contracting Desk Guide.

The approach used to address the audit objectives included the development of audit criteria against which observations, assessments and conclusions were drawn.

The audit criteria developed for this audit are included in Appendix A.

## **4. CONCLUSION**

Generally, the audit found that there is adequate and effective controls in place to support the efficient and effective management of ECLA and contracts are in compliance with the Treasury Board ECLA requirements and AANDC contracting policy. Opportunities for improvement were noted to strengthen management controls in the following areas: AANDC Procurement and Contracting Desk Guide and Program Guidelines; contract administration; and, delegated contracting authority approval.

## **5. FINDINGS AND RECOMMENDATIONS**

Based on a combination of the evidence gathered through interviews, the examination of documentation and systems, and analysis, each audit criterion was assessed by the audit team and a conclusion for each audit criterion was determined. Where a significant difference between the audit criterion and the observed practice was found, the risk of the gap was evaluated and used to develop a conclusion and to document recommendations for improvement.

Observations below include both management practices considered to be adequate as well as those requiring improvement. Recommendations for corrective actions accompany areas identified for improvement.

### **5.1 Contracting Guides**

The objective of the ECLA is to allow the Minister, AANDC, through a non-competitive process, to nominate specific individuals, where sensitivities of a particular file or the complexities of the issues at stake require highly specialized skills. This process is in place to meet special

operational requirements that cannot be met by using the Department's standard contracting practices.

Normally, when contracting for services, work is not allowed to commence until a contract is awarded; however, when the timely delivery of goods or services may be jeopardized by lengthy negotiations, a Letter of Intent<sup>2</sup> can be used by the Deputy Minister to authorize commencement of the work before the contract is awarded. The Letter of Intent is a binding commitment to establish a contract with a designated supplier. The Letter of Intent must accurately describe the work authorized, state the maximum liability of the Crown, expressed as funds to be spent by the contractor, and specify how the payment will be made. Upon completion of negotiations of all the conditions of the proposed contract, the contract approval document is to be submitted for review and approval at the appropriate level.

The Department follows a typical contracting process for entering into and amending service contracts for the services of EW and CDs; however, the Authorization for the Appointment of a New Contract Federal Negotiator and the Authorization for the Re-appointment of an Existing Contract Federal Negotiator (Appointment Authorization Forms) are used to formalize the Ministerial appointment of a CFN and serves as a Letter of Intent. The Appointment Authorization Forms include key elements of a Letter of Intent and serve as a binding commitment. Once the Minister has signed the appointment, the CFN may begin anticipatory work immediately, as requested by AANDC.

The AANDC Procurement and Contracting Desk Guide is in place to provide clear and consistent explanations for Responsibility Centre Managers and to ensure that a standard approach for procurement and contracting is applied across AANDC. The audit noted that the Procurement and Contracting Desk Guide states that "appropriate procurement documents are to be signed by the AANDC officer with delegated financial signing authority and the contractor before the contractor commences work". With respect to ECLA, the Procurement and Contracting Desk Guide also states that "the award and the amendment of these contracts are, however, still subject to all Treasury Board contracting policies and guidelines and the Government Contracts Regulations as well as the government contracting obligations under the Trade Agreements".

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<sup>2</sup> Public Works and Government Services Canada (PWGSC), Standard Acquisition Clauses and Conditions Manual, Chapter 7 – Award of Contracts and Issuance of Standing Offers and Supply Arrangements. The Manual is intended primarily for the use of PWGSC contracting officers acting in PWGSC's capacity as a common services provider, to conduct procurements on behalf of other organizations.

The audit found, however, that the AANDC Procurement and Contracting Desk Guide does not adequately or clearly describe the term ‘appropriate procurement documents’ or provide clear explanation how the Authorization Form is intended to serve as the Letter of Intent and how the Letter of Intent should be applied in the case of ECLA. The Authorization Form also does not explicitly state that it serves as the Letter of Intent.

Without a clear definition in the AANDC Procurement and Contracting Desk Guide of what is considered appropriate and applicable Letter of Intent procurement documentation for AANDC exceptional contracting situations like ECLA, there is increased risk of non-compliance with the ECLA, AANDC and Treasury Board *Contracting Policy*.

**Recommendation:**

1. The Chief Financial Officer should clarify in the AANDC Procurement and Contracting Desk Guide the contracting policy exceptions that apply to Exceptional Contracting Limits Authority and what is considered appropriate supporting documentation that allows work to commence prior to contract award.

## **5.2 Contract Administration**

The audit used a risk-based approach to examine a sample of 15 contracts and 25 contract amendments issued under the ECLA for CFN, EW and CDs. This sample included contracts and contract amendments selected from Regions and Sectors for the period April 1, 2011 to March 31, 2014. The audit expected to find appropriate delegated approvals are obtained and that consistent rationale and justification is retained for audit trail purposes.

While almost all contracts reviewed included appropriate supporting documentation, minor exceptions were noted in the following areas of: security clearance; contract award; indemnification clause; and, contract management.

### **5.2.1 Security clearance**

For all contractors there is a requirement for AANDC to establish, obtain and approve appropriate and relevant security clearance levels prior to the commencement of work. The administrative process that is undertaken to indicate the security requirements of the work and the contractor and obtain and approve security clearances are recorded on the Security Requirements Check List (SRCL) form. Completing the SRCL can be time consuming because of the necessity of having extensive security inspections performed. However, a SRCL form must be completed for all ECLA contracts.

Normally, the SRCL form is expected to be completed prior to the commencement of work; however, with respect to ECLA, there is a necessity to appoint CFNs early in the negotiations process, otherwise there could be a potentially high impact upon negotiation proceedings. In order to manage risks and expedite the security clearance process, while the SRCL form is being completed, an internal security check is performed by TAG to ensure that the ECLA candidates being proposed to the Minister for appointment have a valid security clearance. This

internal security check, which is facilitated by AANDC Security, provides TAG an informal confirmation either via email or verbally that the government security clearance levels related to the proposed candidates are appropriate. This internal security check, however, is not always documented. Without evidence of this internal security check, it is not possible to determine if such an internal validation has occurred. The audit also found that in one of the new EW contracts reviewed, a properly completed SRCL form was not retained on file.

If the security clearance confirmation is not adequately and consistently documented prior to the nomination of the CFN, there is an increased risk of inappropriate access to sensitive information and assets, in the event the security clearance is ultimately denied.

### **5.2.2 Contract award**

As noted above, Ministerial approval of the Authorization Form is used to appointment a CFN and serves as the Letter of Intent for CFN contracts. The Minister approves the appointment; however, there is no formal contract in place yet which includes all required Government of Canada contracting terms and conditions. Upon completion of negotiations of all the conditions of the proposed contract, the contract approval document is to be submitted for review and approval at the appropriate level (i.e. Project Authority and Contracting Authority).

Through testing, it was noted that for all CFN contracts reviewed, the duration between Ministerial appointment and contract award ranged from a month up to nine months after contracted work had begun. During that time, work commenced without the remaining required Government of Canada contracting clauses which are intended to protect the Crown, and the contractor. While a service standard is in place in the Department for sole source contracts, the audit found that approved contracts are not completed within the established timeline because the necessary requisition documentation is not always submitted to the Procurement Hub in a timely manner. The Letter of Intent is intended to be used in exceptional circumstances and the expectation is that the contract approval document is to be submitted for review and approval in a timely manner.

The contract award process for EW and CDs follows the standard departmental process and the expectation is that contractor does not commence work until after a properly approved contract is awarded, which is signified by the date and signature of the delegated contracting authority. For the sample EW and CD contracts reviewed, the audit found that in approximately half of the contracts reviewed, the date that the contractor could begin work (i.e. contract start date) that appeared in the contract preceded the date on which the contract was approved by the contracting authority. The duration ranged from a day up to two and a half months after the contract start date.

When established service delivery standards to finalize a contract award are not met, there is increased risk to AANDC and the Crown during the period while the terms and conditions of the Government of Canada service contracts are not yet in place but work has commenced. In addition, when the contract start date precedes the contract award date (i.e. date that the contract authority approves), there is increased risk that work could begin without the necessary

Government of Canada contracting clauses being in place which are intended to protect the Crown and AANDC.

### **5.2.3 Indemnification Clause**

An indemnification clause is a standard clause included in many Government of Canada contracting that, in essence, clarifies the liabilities of the vendor and the Government. It is the responsibility of the AANDC Contracting Authority to ensure that all required clauses are included in ECLA contracts.

Through testing, it was noted that in one of the 15 new contracts reviewed, an explicit indemnification clause was not included in the contract.

The indemnification clause in ECLA contracts provides better protection to the Contractor. If there is a need to compensate for any harm, liability or loss arising out of the contract, without this clause, there is increased risk because it is left to the courts to decide who is liable. In addition, the Contractor may secure insurance that otherwise would not be required.

### **5.2.4 Contract management**

It was noted that for one of the fifteen CFN contracts selected for testing, AANDC was unable to locate and provide one contract amendment.

The lack of complete contract documentation increases the risk of non-compliance with ECLA, Treasury Board and AANDC contracting policies.

#### ***Recommendations:***

2. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government and the Senior Assistant Deputy Minister of Policy and Strategic Direction should ensure that appropriate evidence of security clearance verification is obtained and retained on file prior to the commencement of contracts.
3. The Chief Financial Officer, working with the Senior Assistant Deputy Minister of Treaties and Aboriginal Government and the Senior Assistant Deputy Minister of Policy and Strategic Direction should ensure that all necessary requisition documentation required to complete the award of a contract is received in a timely manner. In addition, all contracts should include key contract clauses.
4. The Chief Financial Officer, working with the Senior Assistant Deputy Minister of Policy and Strategic Direction, should ensure that all contracting authority approvals (i.e. FAA Section 41) are obtained prior to the contract start date.

### **5.3 Contracting Authority Approval**

As per the AANDC Procurement Delegation of Authorities, contracts under the ECLA must be signed by a Procurement Officer (i.e. Contracting Authority) who holds a PG-04 classification, or above. During the audit, a sample of CFN, EW and CD contracts and contract amendment files were reviewed to ensure that evidence exists that clearly supports appropriate delegated approval.

The audit found that in the CFN, EW, and CD contracts reviewed, almost half of the contracts were not signed by an authorized Procurement Officer. Specifically, in one region the Procurement Officer who approved was not at a PG-04 level or above.

Without appropriate approval by a delegated contracting authority there is a risk of non-compliance with the AANDC approved delegation of authority and an increased risk of inappropriate contractual agreements being used.

#### ***Recommendation:***

5. The Chief Financial Officer should ensure that the Procurement Delegation of Authorities for Exceptional Contracting Limits Authority is only performed by individuals who hold the required delegation of authority.

## 6. MANAGEMENT ACTION PLAN

| Recommendations   | Management Response / Actions  | Responsible Manager (Title)   | Planned Implementation Date (Month & Year)  |
|---|--|---|---|
| <p>1. The Chief Financial Officer should clarify in the AANDC Procurement and Contracting Desk Guide the contracting policy exceptions that apply to Exceptional Contracting Limits Authority and what is considered appropriate supporting documentation that allows work to commence prior to contract award.</p> | <p>Chief Financial Officer:<br/>#1 The Chief Financial Officer Sector will update the Procurement and Contracting Desk Guide to include details on the specific process for Exceptional Contracting Limits Authority contracts.</p>  | <p>Chief Financial Officer</p>  | <p>Chief Financial Officer:<br/>June 2015</p>   |
| <p>2. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government and the Senior Assistant Deputy Minister of Policy and Strategic Direction should ensure that appropriate evidence of security clearance verification is obtained and retained on file prior to the commencement of contracts.</p> | <p>Treaties and Aboriginal Government &amp; Policy and Strategic Direction:<br/>#1 For all new Chief Federal Negotiator, Express Witness &amp; Crown Deponent appointments and re-appointments, Treaties and Aboriginal Government &amp; Policy and Strategic Direction will ensure that appropriate evidence of security clearance verification is retained on the Chief Federal Negotiator file.</p> | <p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government<br/><br/>Senior Assistant Deputy Minister, Policy and Strategic Direction</p> | <p>Treaties and Aboriginal Government &amp; Policy and Strategic Direction:<br/><br/><b>PSD UPDATE:</b><br/><b>Status:</b> Request to Close<br/><br/><b>Update/Rationale:</b><br/>As of 31/3/2015: LMRB will ensure that evidence of security clearance is retained on all files through; a) continuing to ensure all guidelines and instructions to case managers indicate this requirement; and b) conducting an annual verification on all new files to ensure compliance.<br/><br/><b>TAG UPDATE:</b><br/><br/><b>Status:</b> Completed<br/><br/><b>Update/Rationale:</b></p> |



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|  |  |  | <p><b>As of 31/03/2015:</b><br/>TAG will ensure that evidence of security clearance is retained on all files.</p> <p>Monitoring has been reinforced and an email from security is now required in all cases.</p> <p><b>AES: Recommend to close. Closed.</b></p>  |
| <p>3. The Chief Financial Officer, working with the Senior Assistant Deputy Minister of Treaties and Aboriginal Government and the Senior Assistant Deputy Minister of Policy and Strategic Direction should establish service delivery standards to ensure the timely completion of contract award. In addition, all contracts should include key contract clauses.</p> | <p>Treaties and Aboriginal Government:</p> <p>#1 Once a Chief Federal Negotiator appointment is approved by the Minister, Treaties and Aboriginal Government sends a copy of the approved form via email to the program responsible for the file. This email also provides directions on the next steps (i.e.: contract set-up). While the responsibility of setting-up the contract lies with the program (Cost Center Manager responsible for the file), Treaties and Aboriginal Government will work with the Chief Financial Officer to develop a paragraph/sentence reinforcing the importance of timely completion of contract award. This paragraph/sentence will be added to the email Treaties and Aboriginal Government sends to the program confirming Minister's approval of the appointment.</p> <p>Policy and Strategic Direction:</p> <p>#2 Concurrently with the preparation of the Ministerial Authorization for an Express Witness or Crown Deponent contract, Policy and Strategic Direction will draft all necessary requisition documentation required to complete the award of such a contract. Once</p> | <p>Chief Financial Officer</p> <p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government</p> <p>Senior Assistant Deputy Minister, Policy and Strategic Direction</p> | <p>Treaties and Aboriginal Government, Policy and Strategic Direction &amp; Chief Financial Officer:</p> <p><b>1) TAG UPDATE:</b></p> <p><b>Status:</b> Completed</p> <p><b>Update/Rationale:</b><br/>As of 31/03/2015: TAG has included a reminder of the importance of finalizing the contracting process in a timely manner following confirmation of the Ministerial approval of the appointment in emails to responsible programs.</p> <p><b>AES: Implementation still ongoing as at Q4 2014/15.</b></p> <p><b>2) PSD UPDATE:</b></p> <p><b>Status:</b> Underway</p> <p><b>Update/Rationale:</b><br/>As of 31/3/2015: The ECLA Guide is being updated to reflect this practice and the revised version will be finalized by</p> |

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|  | <p>authorization is received, this documentation will be forwarded to the Procurement Hub as soon as possible. Policy and Strategic Direction will work with the Procurement Hub in an ongoing manner to identify and resolve any impediments to a timely award of contract.</p> <p>Chief Financial Officer:</p> <p>#3 For all new Chief Federal Negotiator, Express Witness &amp; Crown Deponent appointments and re-appointments, Chief Financial Officer will ensure that the Procurement Hubs include all key contract clauses in the contracts.</p> |  | <p>April 30, 2015. The approach has been communicated to all case managers, and Policy and Strategic Direction continues to work closely with the procurement hubs to ensure timely finalization of the contracting process of all contracts.</p> <p><b>AES: Implementation still ongoing as at Q4 2014/15.</b></p> <p><b>3) CFO UPDATE</b></p> <p><b>PROGRAM RESPONSE :</b><br/> <b>Status :</b> Completed – Request to Close</p> <p><b>Update/Rationale:</b><br/> <b>As of March 31, 2015</b></p> <p>#3 – Procurement Officers were reminded that specific contract templates with appropriate clauses apply to ECLA contracts. Mandatory training sessions on contract templates with clause by clause review are scheduled for April 2015 with all staff from BC and HQ Procurement Hubs.</p> <p>Procurement has a standard that requires that a contract be prepared within two weeks of receiving it from TAG and PSD.</p> <p><b>AES: Implementation still ongoing as at Q4 2014/15.</b></p> |
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| <p>4. The Chief Financial Officer, working with the Senior Assistant Deputy Minister of Policy and Strategic Direction, should ensure that all contracting authority approvals (i.e. <i>Financial Administration Act</i> Section 41) are obtained prior to the contract start date.</p> | <p>Policy and Strategic Direction &amp; Chief Financial Officer:</p> <p>#1. Policy and Strategic Direction will work with Chief Financial Officer to develop wording for Express Witness and Crown Deponent contracts that will reflect that any such contract will only come into effect once it has been signed by both Parties.</p> | <p>Chief Financial Officer</p> <p>Senior Assistant Deputy Minister Policy and Strategic Direction</p> | <p>Policy and Strategic Direction &amp; Chief Financial Officer:</p> <p>June 2015</p>  |
| <p>5. The Chief Financial Officer should ensure that the Procurement Delegation of Authorities for Exceptional Contracting Limits Authority is only performed by individuals who hold the required delegation of authority</p>  | <p>Chief Financial Officer:</p> <p>#1 AANDC Delegation of Contracting Authority was revised to clarify delegated authority per level for each Hub.</p> <p>#2 Internal controls were added in SAP to prevent contracting officers from performing section 41 approval when in excess of their delegated authority.</p>                  | <p>Chief Financial Officer</p>  | <p><b>PROGRAM RESPONSE :</b></p> <p><b>Status :</b> Completed – Request to Close</p> <p><b>Update/Rationale:</b><br/><b>As of March 31, 2015</b></p> <p># 1 - The AANDC Delegation of Contracting Authority was revised in April 2014</p> <p># 2 - The section 41 approval in SAP-P2P does a validation against Procurement Officer's signature card and will route the approval to higher level if an employee tries to finalize a purchase order above its delegated authority.</p> <p><b>AES: Recommend to close. Closed.</b></p> |

## Appendix A: Audit Criteria

To ensure an appropriate level of assurance to meet the audit objectives, the following audit criteria were developed to address the objectives:

| <b>Governance and Strategic Direction</b> |   |
|---|---|
| 1.1                                       | Monitoring mechanisms are in place to ensure compliance with and exceptional contracting policies and authorities.  |
| 1.2                                       | Authority, responsibility and accountability for Chief Federal Negotiators, Expert Witnesses and Crown Deponent exceptional contracts are clearly defined and communicated. |
| 1.3                                       | Employees are provided the necessary tools and training to support their exceptional contracting responsibilities   |
| <b>Stewardship</b>                        |   |
| 2.1                                       | Requirements for the Chief Federal Negotiators, Expert Witnesses and Crown Deponents are clearly articulated and defined.   |
| 2.2                                       | Exceptional contracts and amendments are approved for expenditure initiation and for Financial Administration Act Section 32.   |
| 2.3                                       | Exemptions relating to contracting actions from bid solicitation are supported for exceptional contracts as outlined in the Exceptional Contracting Limits Authority        |
| 2.4                                       | The selection process for Chief Federal Negotiators, Expert Witnesses and Crown Deponents complies with Treasury Board and departmental policy and guidelines.              |
| 2.5                                       | Exceptional contracts comply with exceptional authority limits.   |
| 2.6                                       | Treasury Board approval is obtained for any exceptional contracts that exceed the limits it prescribes in its Contracting Policy.   |
| 2.7                                       | An explicit indemnification clause is included in all exceptional contracts.  |
| 2.8                                       | The exceptional contract is approved by the departmental Contracting Officer for Financial Administration Act Section 41 approval and by the Contractor.                    |

## **Appendix B: Relevant Acts, Policies, Regulations and Directives**

The following authoritative sources were examined and used as a basis for this audit:

1. Treasury Board *Contracting Policy*
2. Treasury Board *AANDC Exceptional Contracting Limits Authority*
3. Financial Administration Act
4. PWGSC Standard Acquisition Clauses and Conditions Manual