



Courts Administration  
Service

Service administratif des  
tribunaux judiciaires

Internal Audit Report  
Audit of Contracting for Architectural Services  
1998-2004

November 2004

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## Executive summary

The internal audit of contracting for architectural services between 1998 and 2004 was a management requested audit of compliance with Government Contracts Regulations, Treasury Board Contracting Policy, and policies and directives of the former Registry of the Federal court or the Courts Administration Service. Consequently, the audit report notes only those areas found to be in non-compliance and it does not assign any risk value to these findings.

The field-work for this audit was conducted between April 2004 and August 2004 at various locations in the National Capital Region, and involved document review and interviews with current staff of the Courts Administration Service, staff of the former Registry of the Federal Court of Canada ("FCt"), and representatives of departments, agencies and companies involved in the contracts for architectural services.

From the audit work conducted, we have concluded that the former Registry of the FCt was not in compliance with Treasury Board Contracting Policy with respect to contracting for architectural services between 1998 and 2003.

### 1. Statement of Work

- a. Treasury Board Contracting Policy, (s. 16.1.2), requires a clearly defined statement of work. For the first personal services contract of this review, it was noted that the statement of work and deliverables were generally vague.
- b. The statement of work for the inappropriate call up for architectural services under the Human Resources Support Services National Master Standing Offer were non-descript, such that a 3rd party reviewer could not even determine what services were being provided.

### 2. Contracting Authorities

- a. The former Registry of the FCt exceeded their authorities, without Treasury Board approval, for each personal services contract in the sample used for this audit. Authorities for architectural services allow contracts up to \$100,000 to be sole-sourced by Public Works and Government Services, and \$40,000 by other departments. Where the contractor is a former public servant in receipt of a pension, however, this authority is limited to a maximum of \$25,000.

### 3. Fairness in Contracting

- a. Treasury Board Contracting Policy, (s. 16.8.1), requires fairness in contracting with former public servants in receipt of a pension. The audit indicates that other architects had expressed an interest in providing services for the planned Federal Judicial Building, however the opportunity was not opened to competitive bidding until February 2003, by which time, 4 non-competitive contracts, which included these services, had already been awarded.

- Of these 4 non-competitive contracts, it was determined that 1 was an inappropriate use of a Human Resources Support Services National Master Standing Offer.

#### 4. Contract Splitting

- a. Treasury Board Contracting Policy, (s. 11.2.7<sup>1</sup>), requires that contracts not be split in order to avoid obtaining the approvals otherwise required. The former Registry of the FCt entered into 4 consecutive sole-source contracts directly or indirectly with a single resource. The Statements of Work for 2 of the 4 were identical, and the Statements of Work for the other 2 contained variations and some overlap of requirements.

#### Recommendations & Management Response

1. At least 1 senior individual has dedicated responsibility to acquiring the requisite contracting knowledge. The individual should know where to research contracting issues that do not occur frequently, and be tasked with keeping current with any changes to regulations.
  - Management of the Courts Administration Service has agreed to this recommendation. The position of a senior contracting office is currently in classification. Expected staffing in late spring of 2005. Accountability for implementation of this action resides with the Director General Finance & Corporate Services.
2. The Courts Administration Service may wish to consider the establishment of a contracting committee, of at least 3 individuals, to review contracts against established thresholds, and approve those which exceed a specific dollar amount. The committee would report all contracts to the Senior Management Committee on a quarterly or semi-annual basis.
  - Management of the Courts Administration Service will seek expert advice, with a decision to be made when the Senior Contracting Officer is hired. The agreed upon implementation of this recommendation is late spring of 2005, with accountability for this action residing with the Director General Finance & Corporate Services.
3. It is recommended that a set of Courts Administration Service policies and procedures for contracting be updated or established and made available to all staff.
  - a. Policies and procedures should require that all contracts contain clear milestones and defined deliverables, together with pre-determined reporting requirements.

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<sup>1</sup> s. 11.2.7 does not impose time limits – a contract may be viewed to be split if the deliverables and requirements do not change from year to year. A requirement for similar services spanning several years is an indicator that a long-term contracting arrangement should have been considered.

- b. Consideration should be given to recording justification for exceptions under 10.2.1 Section 6 of the Government Contracts Regulations, seeking competitive bids where it is cost effective to do so, even if the value is below the threshold of \$25,000, and ensuring that contract files record the solicitation of such bids, and/or known rates of contractors.
- c. Internal Audit recommends that the Court Administration Service ensure that staff have appropriate training and are kept informed of their responsibilities and avenues for protected disclosures where they believe that contracting activities may be non-compliant with Government Contracting Regulations.
  - o The Courts Administration Service has prepared an updated set of draft policies and procedures for contracting which is consistent with the Treasury Board Contracting Policy. The draft set is completed and awaiting review by a policy expert. Approval anticipated in spring of 2005. Accountability for the implementation of this action is the Director Planning, Budgeting & Analysis.
- 4. All contracts should require certification, by the contractor, in respect to their status in relation to former public servants. Contracting policy and procedures should direct Contracting Officers to refer to the *Curriculum Vitae* for indication of former public service. Where there is certification of former public service, or the *Curriculum Vitae* indicates former public service, the Contracting Officer should obtain Human Resources Services Branch approval for the proposed contract, as well as a waiver from the contractor allowing Human Resources Services Branch to contact the contractor's former department for any additional information required to calculate abatements.
  - o As part of the changes to policies and procedures, checklists are to be added to all personal services contracts, requesting former Public Servant status. Accountability for this action, which is to be implemented by January of 2005, resides with the Director of Planning, Budgeting & Analysis.
- 5. Either as a part of updated policies and procedures, or independently, roles and responsibilities of each function, in relation to contracting should be defined. Training with regards to roles and responsibilities in contracting should be provided to all managers.
  - o In response to this recommendation, management has committed to define, as part of the updated policies and procedures, the roles and responsibilities of each function, in relation to contracting. Training with regards to roles and responsibilities in contracting will be provided to Managers of the Courts Administration Service. This action is to be implemented once the Senior Contracting Officer has been hired, with accountability residing with the Director General Finance & Corporate Services. Per the memo issued on December 7, 2004 by the D.G. Finance and Corporate Services, contracting

authorities were suspended March 3, 2004 and will remain suspended until adequate training is provided.

Prior to the commencement of the audit work, Senior Management at the Courts Administration Service had taken significant steps to improve management controls at the Service, particularly with regard to contracting.

Following communication of the audit findings, the senior management of the Courts Administration Service has committed to, and begun to implement, a management action plan which addresses the findings and recommendations of this audit.

## Assurance

We have completed the internal audit of contracting for architectural services. The objective of this engagement was to review a series of contracts awarded for architectural services, in order to:

- Ascertain which, if any, of the Government Contracting Regulations, Treasury Board Contracting Policy, former Registry of the FCt or Courts Administration Service policies, procedures and/or directives where breached,
- Identify any control weaknesses that may have allowed a breach of regulations, policies, procedures and/or directives; and,
- Recommend control improvements to reduce the likelihood of future breaches of the control framework, and minimize the exposure of the Courts Administration Service should a material breach of regulations, policies, procedures and/or directives occur.

The internal audit was conducted in accordance with the Treasury Board Policy on Internal Audit and the Institute of Internal Auditors Standards for the Professional Practice of Internal Auditing.

The audit examined the management control framework for contracting.

The examination was conducted during the period of April 2004 to August 2004.

The scope of the audit covered the period of October 1998 to February of 2004, and involved the review of contracts awarded for architectural services.

The criteria used to assess the entity were:

- Government Contracts Regulations,
- Treasury Board Secretariat Contracting Policy,
- Courts Administration Services Policies, Procedures and Directives related to Contracting and Procurement, and
- Policies, Procedures and Directives on Contracting and Procurement of the former Registry of the FCt.

The criteria were discussed and agreed with management prior to the conduct of detailed audit procedures.

We have concluded that the Treasury Board Contracting Policy had not been followed.

In my professional judgment as Director of Internal Audit, sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The limits to this statement of assurance are:

- Access to human resources information held by another department was not permitted, in accordance with subsection 8(1) of the Privacy Act. Personal information under the control of a government institution cannot be disclosed without the consent of the individual to whom it relates, except in limited circumstances as described under subsection 8(2) of the Act. The department, having reviewed the relevant paragraphs and are of the opinion that none of the provisions are applicable in this case. Internal audit could not corroborate

- information pertaining to former public service employees in receipt of a pension such that we could corroborate audit evidence as to the appropriate abatements.
- Contracting documents held by other organizations were not accessible, and thus have restricted the level of assurance and opinion of Internal Audit with regards to the specific service agreements of 1998 to 1999, and consequently the to audit opinions regarding appropriate abatements for the personal services contract of 2000 to 2001.

Notwithstanding these limits, the evidence gathered supports the accuracy of the conclusions contained within this report, and consequently the level of audit assurance is considered to be high.

The conclusions were based on a comparison of the situations, as they existed at the time, against the audit criteria. The conclusions are only applicable for the entity examined. The evidence gathered meets professional audit standards and is sufficient to provide senior management with the proof of the conclusions derived from the internal audit.

*J. Norminton*

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Director of Internal Audit  
Courts Administration Service

## Introduction

### *Context*

On July 2, 2003, the two predecessor organizations (former Registries of the Federal Court of Canada and Tax Court of Canada) of the Courts Administration Service were amalgamated with the bringing into force of Bill C-30.

As a result of the identification of weaknesses in management practices, the Director General, Finance and Corporate Services (Senior Financial Officer) and the Director General, Human Resources carried out reviews at the request of the Chief Administrator. These reviews indicated not only that a number of the weaknesses identified by the Auditor General continued through 2002-03, but also that some additional weaknesses existed in the management control framework.

On February 26 of 2004, the Chief Administrator was made aware of, of a large value contract which may have involved a breach of Government Contracts Regulations, Treasury Board Contracting Policy, and former Registry of the Federal Court, or Courts Administration Service policies, procedures and/or directives.

On March 03, 2004, all contracting authorities that were delegated to responsibility centre managers were suspended and such authorities were restricted to the Deputy Head and the Senior Financial Officer.

Subsequently, the Chief Administrator of the Courts Administration Service requested an internal audit be conducted in order to gain an independent and objective opinion on compliance with Government Contracts Regulations, and Treasury Board Contracting Policy.

### *Objectives and scope*

The objective of this engagement was to review a series of contracts awarded for architectural services, in order to:

- Ascertain which, if any, of the Government Contracts Regulations, Treasury Board Contracting Policy, former Registry of the FCT, or Courts Administration Service policies, procedures and/or directives were breached;
- Identify any control weaknesses that may have allowed a breach of regulations, policies, procedures and/or directives; and,
- Recommend control improvements to reduce the likelihood of future breaches of the control framework, and minimize the impact to the Courts Administration Service should a material breach of regulations, policies, procedures and/or directives occur.

The geographic scope of the work was confined to the National Capital Region (NCR) where the former Registry of the FCT and the offices of the Courts Administration Service are located.

The work covered the period of October 1998 to February of 2004, and involved the review of contracts awarded for architectural services.

### *Methodology*

The auditors reviewed the contracting processes of the former Registry of the FCt, and the new Courts Administration Service related to the award of contracts for architectural services between 1998 and 2004.

The audit used judgmental sampling of agreements and contracts for architectural services between 1997<sup>2</sup> and 2004 to create a sample pool of files with a total agreement amount of \$1,189,039, of which \$883,415 was contracting directly and indirectly between the former Registry of the FCt and an external architect.

The total payments made for the agreements and contracts under review were \$712,650, with \$417,500<sup>3</sup> through contracts directly and indirectly between the former Registry of the FCt and an external architect.

The review process included,

- A thorough review of contracting and associated documents generated in the former Registry of the FCt, and the Courts Administration Service, of the period defined in the scope, for contracts for architectural services;
- Structured interviews with, staff and representatives of external organizations involved in contracting for architectural services

Reliance was placed on prior audit and management reports, of the period under review, where Internal Audit could establish that there was a high degree of audit assurance, or confidence in the observations and conclusions.

The auditors assessed the information gained through the review and interview process. Where there have been found to be breaches of the Government Contracts Regulations, Treasury Board Contracting Policy, former Registry of the FCt, Courts Administration Service (when applicable) policies, procedures and directives, the auditors formulated findings related to actions, responsibilities and underlying issues.

The auditors identified potential improvements to the management control framework where weaknesses had been identified.

The auditors ensured that the engagement was performed in accordance with the Treasury Board Policy on Internal Audit, and Professional Practices Framework of the Institute of Internal Auditors.

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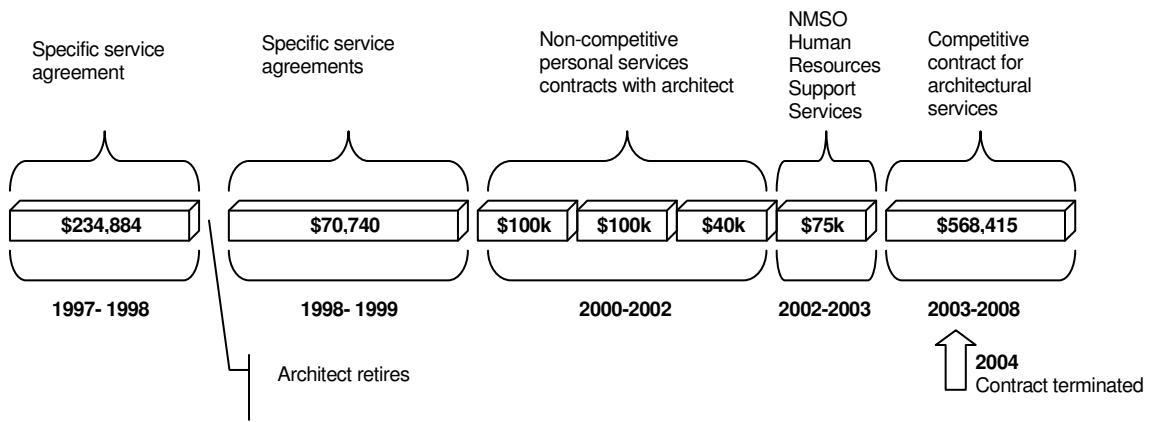
<sup>2</sup> The scope of the sample pool was expanded to include 1997 to 1998 in order to incorporate interdepartmental agreements for architectural services which allowed for analysis of trends for deliverables where architectural services were required by the former Registry of the FCt.

<sup>3</sup> The \$465,915 difference between the contracted amount and paid amount results from senior management of the Courts Administration Service terminating a contract upon becoming aware of, and validating control issues associated with, contracts and agreements entered into by the former Registry of the FCt for architectural services prior to the amalgamation of the 2 former registries.

## Audit results

### Series of Contracts - Overview

Internal Audit is of the opinion that the former Registry of the FCt attempted to retain the services a specific contractor over several years without resorting to a competitive process.



The former Registry of the FCt entered into a specific service agreement, for the provision of architectural services from March 1997 to June of 1998, with an extension to September of 1998, for a total value of \$234, 884. The architect was to:

- review standards dealing with accommodations;
- assist in all phases of accommodation projects;
- provide advice on premises use;
- assist in the development of memorandums of understanding for accommodations;
- verify the accuracy of reports dealing with former Registry of the FCt premises, review CAD plans for accuracy; and,
- review plans for former Registry of the FCt accommodations in the National Capital Region.

No audit findings were raised regarding this specific service agreement.

From interviews, Internal Audit found that the architect had retired from the public service in late 1998, under an early departure incentive scheme. The architect may have been eligible for a lump sum payout equivalent to 70 weeks earnings. Correspondence from former Registry of the FCt Human Resources (HR) indicates that there was knowledge, in the former Registry of the FCt HR directorate at that time, that the architect had been an employee of the public service.

From December of 1998 to late 1999, the former Registry of the FCt entered into two specific service agreements for the provision of architectural services, with a total value of \$70,740. While, the architect provided through the agreement was the same architect provided for the previous specific service agreement, he was at that time a sub-contractor for a project management firm.

The architect was to:

- review and develop national standards for courthouse and judicial centre design;
- provide advice on the best use of premises;
- advise court personnel on all aspects of its accommodations projects;
- review plans for accuracy; and,
- analyse, develop, and recommend on options pertaining to its premises.

No audit findings were raised regarding this specific service agreement.

From March 2000 to April 2001, at the direction of the former Administrator of the Registry of the Federal Court of Canada (Administrator of the Court), the former Registry of the FCt entered into a personal services contract, valued at \$100,000 with the individual who provided architectural services under the previous specific service agreements.

The architect was to:

- prepare client brief for requirements;
- provide advice on each site proposal, proposed by PWGSC;
- prepare project schedules for major milestones;
- prepare draft layouts for each proposal;
- review draft national court standards dealing with accommodations for applicability to projects;
- assist in all phases of accommodations projects;
- provide advice on best use of premises;
- advise on all aspects of accommodations projects by viewing other Court's project(s);
- review plans prepared to determine their accuracy; and,
- review and analyse and options provided to the Registry of the Federal Court on proposal for premises in the National Capital Region.

Internal Audit found that, for this contract, the former Registry of the FCt was not compliant with Treasury Board Contracting Policy. Senior management was aware of the lower threshold of delegated authorities, with which they were non-compliant, as the Administrator of the Court had been informed in writing of the relevant Treasury Board policy in December of 1999, as well as verbally February of 2000.

Having reviewed the agreed upon deliverables for the two specific service agreements and the personal services contract, Internal Audit are of the opinion that sufficient similarities exist between them to justify an assessment that there was an ongoing requirement for a range of architectural services, and that a competitive process should have begun.

From April 2001 to March 2002, the former Registry of the FCt entered into a personal services contract, valued at \$100,000 with the individual who provided architectural services under the previous personal services contract.

The architect was to:

- prepare project schedules for major milestones;
- prepare draft layouts for each proposal;
- prepare layouts for Ottawa Judges' Chambers expansion;

- prepare strategic plan for St. John's, Newfoundland;
- review architectural options for Toronto functionalities;
- participate in study of security requirements for building and report on its impact architecturally;
- review Treasury Board submission regarding project requirements and suggest corrections or other input;
- analyse best options on approaches to standards for requirements and trade-offs on specific layouts;
- provide advice on ongoing projects;
- prepare layouts and project schedule for Edmonton accommodation expansion;
- prepare Quebec accommodation changes to existing area and participate with ongoing project completion;
- custom design in order to upgrade existing premises; and,
- research and development, review existing courthouses.

Internal Audit found that, for this contract, the former Registry of the FCt was not compliant with Treasury Board Contracting Policy.

In December of 2001, the former Registry of the FCt was informed of the Treasury Board Contracting Policy threshold of \$40,000 for non-competitive contracts to provide architectural and engineering services for departments other than PWGSC.

In January of 2002, Internal Audit noted correspondence with the Administrator of the Court, informing him that the personal services contract was running out of funds, suggested closing the contract and entering into a new contract, with new deliverables, and provided the suggestion of considering security requirements resulting from the events of September 11<sup>th</sup> into the deliverables. The correspondence also noted that a member of the management team was also working on a submission to the Treasury Board for the approval of two contracts. It was further noted that the former Registry of the FCt might wish to begin considering a competitive process.

From January 2002 to March 2002, the former Registry of the FCt entered into a personal services contract, valued at \$40,000 with the individual who provided architectural services under the previous personal services contract. The statement of work for this contract was identical to the previous personal services contract.

Internal Audit found that, for this contract, the former Registry of the FCt was not compliant with Treasury Board Contracting Policy.

Internal Audit noted that in February of 2002, the Senior Financial Advisor of the former Registry of the FCt provided advice that the competitive process should begin, and that any new contractual agreement must have new and unrelated deliverables.

Internal Audit found that the former Registry of the FCt had, in February of 2002, initiated the process to request Treasury Board approval of a non-competitive multi-year contract for architectural services, valued at \$583,000 as part of a TB submission. It was noted from the interviews that this option was later abandoned as it was not viewed as viable due to the length of time it would take to gain Treasury Board approval.

A similar submission of the former Registry of the FCt was eventually approved by the Treasury Board but did not contain request for approval of a multi-year non-competitive contract for architectural services.

Correspondence between senior management of the former Registry of the FCt in April of 2002 provided options for securing contracted architectural services, it was noted specifically that selecting the competitive contract option would require clear and specific deliverables and milestones, and, that the individual selected could be "anyone". It was advised that the former Registry of the FCt seek Treasury Board approval for a non-competitive multi-year contract for architectural services (as part of a submission to the Treasury Board for additional funding and authority to enter into specified contracts *supra*).

Internal Audit noted that in April of 2002, the former Registry of the FCt began the competitive process to obtain architectural services. The estimated final contract cost to the former Registry of the FCt, including consulting fees associated with the preparation of the competitive process, was \$1.272 million.

Internal Audit noted correspondence, in May of 2002, with the Administrator of the Court which noted the Treasury Board policy requiring their approval of competitive contracts above \$100,000 where the contractor is an individual who is a former public servant in receipt of a pension. It also noted in the correspondence that this approval was not likely, and that Treasury Board approval was not required if the individual were to go through an established firm.

Internal Audit notes, during interviews, that the term, "bridge" was used with reference to options considered for the retention of architectural services to span the gap between the final personal services contract and the completion of the competitive process through the electronic tendering system, MERX. From the correspondence and interviews, internal audit believe that senior management of the former Registry of the FCt anticipated that the architect already providing the services would be successful in the competitive process.

Internal Audit notes that correspondence in May of 2002 used the term "bridging contract", in reference to a contracting option during the period of review of MERX submissions. It was further noted that this correspondence between former Registry of the FCt senior management had hand written notations of one director of the former Registry of the FCt and the Administrator of the Court.

Internal Audit noted that in May of 2002 the former Registry of the FCt postponed the competitive process, and obtained the architect's services, from May of 2002 to March of 2003, through a human resources consulting firm via a \$75,000 call-up under a National Master Standing Offer (NMSO). Internal Audit found that the Administrator of the Court approved the proposal for services under this NMSO, approved the monthly status reports, and approved work as having been performed.

Per the agreed proposal, the contractor was to, "provide consulting services and advice to the Administrator of the Court and the Court."

Internal Audit is of the opinion that those involved in call-up at the former Registry of the FCt were aware that the NMSO was for human resources services, and not architectural services, and that the architect was not on the list of approved staff of the contractor.

Internal Audit found that, for this contract the former Registry of the FCt had made inappropriate use of this NMSO.

Internal Audit notes that all of the personal services contracts and the call-up against the NMSO were for the maximum values that the former Registry of the FCt believed were allowable.

Internal Audit noted that in November of 2002, the competitive process was restarted, and that the architect was on record as being a sub-contractor for the aforementioned human resources consulting firm. This firm was eventually awarded the contract. Internal Audit notes that the contractor did comply with the mandatory requirements of the tender, and did have the lowest rate of the 3 bids received.

No audit issues relating to this contract were identified.

## Specific Internal Audit Findings

### Policies & Procedures

The review of the Financial Administration Manual (dated 5/09/1997) and issued under the authority of the Administrator of the Court indicates that while it was outdated (e.g. in terms of certain financial limits indicated), the underlying intent of the policies were similar to Treasury Board guidance.

The interview process indicated that save for the Administrator of the Court, and the former Senior Financial Advisor of the Registry of the Federal Court of Canada, there was little awareness amongst those involved in contracting of the inclusion of contracting policy in section 7.1 of the Financial Administration Manual of the former Registry of the FCt.

The interview process indicated that following the departure of the Contract Officer of the Registry of the Federal Court of Canada, reliance was placed upon Treasury Board guidelines and related Government Contracting Regulations, as well as upon the experience of more senior staff.

Internal Audit found that responsibilities for contracting were delegated to existing former Registry of the FCt staff, rather than filling the role of the Contracting Officer with an experienced procurement specialist. The inadequate contracting knowledge, and lack of awareness of contracting policy within the former Registry of the FCt, may have contributed to the failure of the former Registry of the FCt to comply with Treasury Board Policy.

*The audit found that the contracting policy was out of date, and had not been adequately communicated within the former Registry of the FCt.*

Internal Audit recommends that Courts Administration Service policies and procedures for contracting be updated or established and made available to all staff, with appropriate training seminars provided to managers.

Internal Audit is of the opinion that the Courts Administration Service would benefit from the dedication an individual with the requisite contracting knowledge and experience to manage and be accountable for contracting activities for the acquisition of both services and assets.

Courts Administration Service Management agreed with the finding and recommendation, and the Planning, Budgeting & Analysis Division have begun a process of updating the Service's policies and procedures, with a draft of the update ready for review by contracting specialists.

### **Requirement for a clearly defined statement of work**

Treasury Board Contracting Policy 16.1.2 requires that:

"...the statement of work or requirements should clearly describe the work to be carried out, the objectives to be attained and the time frame."

Of the contracts included in the sample used in this audit, two personal services contracts had vague statements of work. The former Contracts Officer indicated during the interview process that in his opinion, he would recommend improvements, were he to redo the process today.

Of the contracts included in the sample, a call up against a National Master Standing Offer for Human Resources Support Services contained a one line statement of work, "...to provide consulting services and advice to the Administrator of the Court." without specific objectives, tasks, constraints or boundaries, schedules, or reporting requirements.

*Internal audit found that there was not consistent compliance with the Treasury Board Contracting Policy requirement 16.1.2 for clear statements of work.*

Internal Audit recommends that Courts Administration Service policies and procedures for contracting require that all contracts contain clear milestones and defined deliverables, together with pre-determined reporting requirements.

Courts Administration Service Management agreed with the finding and recommendation, and the Planning, Budgeting & Analysis Division will incorporate this recommendation into the revised policies and procedures.

## **Requirement to solicit bids**

Sections 5 to 7 of the Government Contracts Regulations requires the solicitation of bids where the contract amount is anticipated to exceed \$25,000, save for architectural and engineering services. For these services, the Regulations place a \$100,000 limit on non-competitive contracts.

None of the personal services contracts reviewed by the audit team exceeded \$100,000 therefore the former Registry of the FCt appeared to have complied with the Government Contracts Regulations. Consideration must be given, however, to the other regulations which set lower contracting limits for the non-solicitation of bids under specific circumstances.

The Administrator of the Court noted that the decision to pursue a non-competitive contract was his own, based upon an opinion that the chosen contractor represented good value for money. There is no record on file of per diem rates for other architects, including those whom the Administrator of the Court indicated had also expressed an interest in providing services to the former Registry of the FCt.

It is understood by Internal Audit that the Administrator of the Court informally approached architects and sought their rates. It was indicated during the interview that overhead costs associated with operations as a corporation or partnership prevented these architects from being able to provide a rate that was competitive with the contractor who was selected.

Internal Audit is of the opinion that this process prevented individual architects, with low overhead, from participating in a competitive market for the provision of services to the former Registry of the Federal Court. Internal Audit is of the opinion that regardless of the perceived exception under the Government Contracts Regulations, a competitive process should have been entered into, to ensure the best value was achieved, and to ensure fairness in contracting.

The Administrator of the Court noted that the agreed upon per diem for the first personal services contract, valued at \$100,000, was a rate agreed upon between the Administrator of the Court and the contractor and based upon the contractor's salary upon his retirement from the Public Service.

The Administrator of the Court noted that the agreed upon per diem for the second personal services contract, valued at \$100,000, was an increase of \$250 per day on the rate agreed upon between the Administrator of the Court and the contractor and was based upon the amount that the Administrator of the Court believed would be equivalent to what internal staff were receiving.

Internal Audit is of the opinion that the manner of the establishment of per diem rates through agreements between the Administrator of the Court and the contractor was not in the spirit of the either the Government Contracting Regulations or the Treasury Board Contracting Policy.

While section 10.6.1 of the Treasury Board Contracting Policy states that the competitive process is the normal way to establish best value and price, it does state that this process may be set aside, and price established by other means. Internal Audit found that the Administrator of the Court established rates based upon prior earnings by the

contractor, and increased the per diem rate based upon perceived parity with the earnings of internal staff of a similar level. This practice is not considered to be one conducive to acquiring the best value for money, and does not allow a competitive market process to act.

The Treasury Board Contracting Policy at section 10.2.3 indicates an expectation that the contracting authority will call for bids when it is cost effective to do so, regardless of whether or not the anticipated value of the contract exceeds the established thresholds.

Internal Audit found no justification for pursuit of a non-competitive process, per s. 10.2.1 b of the Treasury Board Contracting Policy, in any of the contract files reviewed.

*Internal Audit found that there was inadequate contracting knowledge within the former Registry of the FCt, resulting in failure to comply with Government Contracting Regulations regarding the solicitation of bids.*

*Internal Audit found that the contracting practices observed in the former Registry of the FCt did not follow the spirit of the Government Contracting Regulations or Treasury Board Contracting Policy, with regards achieving best value through a competitive market.*

Consideration should be given to recording justification for exceptions under 10.2.1 of the Treasury Board Contracting Policy, and Section 6 of the Government Contracts Regulations, seeking competitive bids where it is cost effective to do so, even if the value is below the limits of s. 10.2.1, as well as ensuring that contract files record the solicitation of such bids, and/or known rates of contractors.

Internal Audit recommends that the Courts Administration Service dedicate at least 1 senior individual to have responsibility for acquiring the requisite contracting knowledge, and that the individual(s) should know where to research contracting issues that do not occur frequently, and be tasked with keeping current with any changes to regulations.

Courts Administration Service Management agreed with the finding and recommendation, and is modifying organizational structure to best meet this requirement. The Courts Administration Service presently has designated 2 positions as having responsibility for contracting (one for services and the other for goods).

## **Requirement to abide by delegated authorities**

As noted in this report, the former Registry of the FCt appeared to have complied with Government Contracts Regulations in relation to the acquisition of engineering or architectural services.

It should be noted that the footnote accompanying Schedule 3 - Service contracts (Excluding Architectural and Engineering Services) of Appendix C - Treasury Board Contracts Directive notes that:

The contracting limits for architectural and engineering services are specified in paragraphs 9., 18., 53. and 54. of Part II of this appendix.

At s. 18 of Part II of the appendix:

18. The Minister responsible for Public Works and Government Services may
- (a) enter into a contract for the acquisition of architectural and engineering services if the amount payable under the contract does not exceed:
    - (i) \$2,000,000 in competitive contracts, or
    - (ii) \$100,000 in non-competitive contracts;

And at s. 54

54. Notwithstanding the basic contracting limits provided in Part I of this Appendix, any contracting authority, other than those mentioned in paragraphs 18. and 53. of Part II of this Appendix, may only
- (a) enter into a contract for the acquisition of architectural and engineering services if the amount payable under the contract does not exceed \$40,000; and
  - (b) increase the amount payable under a contract for architectural and engineering services by a total amount not exceeding \$20,000.

Internal Audit has therefore found that for the first 2 personal services contracts valued at \$100,000 each, the former Registry of the FCt exceeded its delegated authorities under s. 54 of Schedule 3; Appendix C of the Treasury Board Contracting Policy by \$60,000 in each instance.

Internal Audit has found that for the 3rd personal services contract, the former Registry of the FCt did not exceed its delegated authorities under s. 54 of Schedule 3; Appendix C of the Treasury Board Contracting Policy

The Treasury Board Contracts Directives (Appendix C to the Treasury Board Contracting Policy) set out the limits under which contracting authorities may enter into without receiving Treasury Board approval.

At Part I, Schedule 4, of the Treasury Board Contracts Directives notes that:

(1) Non-competitive (directed) service contracts with former public servants in receipt of a pension:

ENTRY

(a) contracting authorities may negotiate and award any contract whose total value, including all amendments is \$25,000 or less;

(b) Treasury Board approval is required to enter into any contract whose total value exceeds \$25,000;

(c) the fee component in any contract must be abated if the individual has been retired for less than one year and is in receipt of a pension.

and, in the notes concerning service contracts with former public servants:

5. The application of the current requirement for the one year contract fee abatement policy to former public servants in receipt of a pension paid pursuant to the *Public Service Superannuation Act* as indexed by the *Supplementary Retirement Benefits Act* is postponed, to have it begin at the conclusion of the lump sum payment period.

Of these 3 contracts, the contractor self-certified for the 2 valued at \$100,000 that it was an agreement between the former Registry of the FCt and an individual. For the 3rd contract, valued at \$40,000, there was no self-certification of status; however the contract details are identical to the other 2, and refer to an agreement between the former Registry of the FCt and an individual, and not a partnership or incorporated entity.

Internal Audit has found that the Administrator of the Court had been formally informed in 1999, and early 2000, of contracting limits imposed by Part I, Schedule 4, of the Treasury Board Contracts Directives, specifically that a non-competitive contract with a former public servant, whose total value exceeds \$25,000, required the approval of the Treasury Board. No exceptions to these limits for architectural or engineering services are noted in Part I, schedule 4. No exceptions to the limits imposed by the Treasury Board were noted in statutes or regulations related to the administration of the former Registry of the FCt.

Of the contracts sampled, 3 were non-competitive personal services contracts which were entered into without Treasury Board approval between March of 2000 and December of 2001. Of these 3 contracts, the former Registry of the FCt exceeded delegated authorities under Part I, Schedule 4; Appendix C of the Treasury Board Contracting Policy by \$75,000 for each of the first 2 personal services contracts, and by \$15,000 for the 3rd.

It was evident with respect to two of the personal services contracts that save for the senior management of the former Registry of the FCt<sup>4</sup>; there was a lack of knowledge of this section of the Treasury Board Contracting Policy. Review of the files and interviews indicate that, save for senior management, those involved at the time appeared to be knowledgeable only in respect of the Regulations exception for soliciting bids for architectural and engineering services, and therefore issued contracts with the apparent allowable maximum of \$100,000.

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<sup>4</sup> The Administrator of the Court, Senior Financial Advisor, and Director of Operations having been formally informed of these limits in 1999 and early 2000

The audit found that for the period of 1997 to 2000 there was a resource from former Registry of the FCt materiel management dedicated to the role of Contracting Officer, with one of the role's objectives being to manage the needs for services. The resource had previously been primarily devoted to contracting for goods.

The audit found that from the departure of the Contracting Officer in 2000, to period of amalgamation of the former Registries, the position was not filled, and responsibility was dispersed to various individuals throughout the organization, depending upon their availability.

Before entering into the 3rd personal services contract, employees of the former Registry of the FCt with contracting responsibilities became aware of the authorities for architectural services and consequently issued a contract for what they believed was the maximum allowable value of \$40,000. Records indicate that the former Registry of the FCt still was not in compliance with Part I, Schedule 4, of the Treasury Board Contracts Directives.

While the contract files indicated that the architect awarded the personal service contracts was a former public servant in receipt of a pension, there was no documentation that the status was considered by the former Registry of the FCt for any of the personal services contracts.

Review of the files and interviews indicate that the Administrator of the Court was aware that the contractor was a former public servant in receipt of a pension, who had retired through an early departure incentive scheme, and consequently could have been eligible for a lump sum payment equivalent to up to 70 weeks of pay.

Under this scheme, the public servant was eligible for 1 week of pay per year of service under the Work Force Adjustment Directive, and 52 weeks of pay under early departure incentive for a maximum lump sum payout equivalent to 70 weeks of pay.

The contract file indicates that the contractor had over 20 years of continuous public service, and therefore would have been eligible for the maximum payment equivalent to 70 weeks.

Review of contract files indicate that the architect was deployed through a project management firm for a specific service agreement in place during that 70 week period, and therefore there was no non-compliance with limits on contract value per the TB Contracting Policy Notice 1995-8 (consolidated into TB Contracting Policy in 1998) for individuals in receipt of a lump sum payout.

The review of the file indicates that Part I, Schedule 4 of the Treasury Board Contracts Directives was not considered for the first personal services contract, and may constitute non-compliance with the Treasury Board Contracts Directives<sup>5</sup>.

Review of the files also indicates that information indicating that the contractor was a former public servant had been provided to Human Resources Branch.

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<sup>5</sup> Note reservations in assurance statement. Periods of elapsed time for limits and abatements would depend upon HR information, which would allow an accurate calculation of limits and abatements.

*Internal Audit found that there was inadequate contracting knowledge within the former Registry of the FCt, resulting in failure to comply with delegated authorities, or act as a challenge mechanism within the former Registry of the FCt.*

*It was found that there was awareness of the status of the contractor as a former public servant in receipt of a pension, but that this was not communicated to the Contracting Officer.*

*Audit found that the first personal services contract awarded to the contractor was not signed by a representative of former Registry of the FCt HR Branch, the auditors found that the 3rd personal services contract was signed by an HR representative certifying that an employer-employee relationship did not exist, but did not certify with respect of the status of the contractor being a former public servant.*

Internal Audit recommends that the Courts Administration Service dedicate at least 1 senior individual to have responsibility for acquiring the requisite contracting knowledge, and that the individual(s) should know where to research contracting issues that do not occur frequently, and be tasked with keeping current with any changes to regulations.

Internal Audit recommends that the Courts Administration Service may wish to consider the establishment of a contracting committee (at least 3 individuals) to review contracts against established thresholds, and approve those which exceed a specific dollar amount. The committee would report all contracts to senior management on a quarterly or semi-annual basis.

Internal Audit further recommends that all contracts should require certification, by the contractor, in respect to their status in relation to former public servants. Contracting policy and procedures should direct Contracting Officers to refer to the *Curriculum Vitae* for indication of former public service. Where there is certification of former public service, or the *Curriculum Vitae* indicates former public service, the Contracting Officer should obtain Human Resources Branch approval for the proposed contract, as well as a waiver from the contractor allowing Human Resources to contact the contractor's former department for any additional information required to calculate abatements.

Courts Administration Service Management agreed with the finding and recommendations. The Service is modifying organizational structure to best meet these recommendations, and is incorporating the recommendation for certification into the revisions of policies and procedures. Currently, responsibility for contracting for services in CAS resides with the Manager, Materiel Management (Planning, Budgeting and Analysis Division).

## Requirement for fairness in contracting with former public servants

At s. 16.8.1 of the Treasury Board Contracting Policy it is noted that:

"...contracts for the services of former public servants in receipt of a pension or of a lump sum payment (the definition of "former public servant" can be found in Appendix A) are to bear the closest public scrutiny and reflect fairness in spending public funds. Contracting authorities should exercise extreme discretion when contracting with former employees in receipt of a pension or of a lump sum payment. "

Internal audit found that the specific service agreements of 1998 to 1999 were compliant with TB Contracting Policy sections on adjustments to take into account lump sum payouts to former public servants.

The sub-agreements involved in these specific service agreements involved a non-competitive contract with a firm that in turn, appears to have sub-contracted to the architect. As these agreements were not undertaken by the former Registry of the FCt, and consequently are outside of the scope of this audit, no audit opinion is given for these agreements.

For the initial personal services contract reviewed, the Contracting Officer was not informed that the architect awarded the contract was a former public servant in receipt of a pension. It should be noted also that the contracting officer did not enquire as to whether he was a former public servant.

Audit has established, however, that senior management of the former Registry of the FCt was aware of the contractor's status as a former public servant, as was Human Resources and that the Administrator of the Court was aware that the contractor had retired under an early departure incentive scheme.

Internal Audit is of the opinion that for all 3 personal services contracts, the former Registry of the FCt did not discharge its duties under s. 16.8.1 of the Treasury Board Contracting policy in that there is no evidence on file of the former Registry of the FCt exercising extreme discretion in contracting with an individual whom they were aware was a former public servant.

*Internal Audit found that the former Registry of the FCt did not take into account that the contractor was a former public servant, and consequently exceeded its delegated authorities.*

*Internal Audit noted that none of the contracts recorded the contractor's status as a former public servant.*

All contracts should require certification, by the contractor, in respect to their status in relation to former public servants. Contracting policy and procedures should direct Contracting Officers to refer to the *Curriculum Vitae* for indication of former public service. Where there is certification of former public service, or the *Curriculum Vitae* indicates former public service, the Contracting Officer should obtain Human Resources Branch approval for the proposed contract, as well as a waiver from the contractor

allowing Human Resources to contact the contractor's former department for any additional information required to calculate abatements.

Courts Administration Service Management agreed with the finding and recommendations. As part of the changes to the policies and procedures, the Courts Administration Service will require certification, by the contractor, of status as a former public servant. Policies and procedures will require the contracting officer to review the contractor's *Curriculum Vitae* for indicators of status as a former public servant. The Courts Administration Service will require contractors who do self identify as former public servants, or who are identified by the contracting officer, to sign a waiver allowing access to their personnel records of their former department for the calculation of abatements or other limits on contract values.

## **Inappropriate use of a National Master Standing Offer**

The former Registry of the FCt engaged the services of an architect through a National Master Standing Offer for Human Resources Support Services [405ZG.E60ZG-010002/A] (Hay plan services, Universal Classification Standards services, and other public service classification standards and general human resources staffing program services or compensation services), which did not include architectural consulting as a service available under this standing offer.

Clause 4.1 of the National Master Standing Offer (NMSO) for Human Resources Support Services states that,

The Supplier may only provide the people identified in this guide to the federal government against any call-ups issued. No new suppliers or consultants may be added during the entire standing offer period.

Review of the standing offer documentation indicates that the architect engaged through this standing offer was not on the list of people approved to provide services.

Review of the contract files indicates an awareness of the fact that the NMSO did not include architectural services and that the services sought were inappropriate for this NMSO, in that it was found that there were deliberate editorial changes to draft versions of contract documentation, removing reference to the type of service being provided, and the name of the contractor. It should also be noted that the total value of the proposal was amended during these editorial changes, increasing the value of the agreement by \$27,000 to \$75,000 (not including GST), which is the maximum allowable under the NMSO.

While the Administrator of the Court indicated during interviews that he did not know the details of the contract, review of the contract files indicates that the Administrator of the Court received regular status reports as to the work undertaken under the NMSO, and approved both the reports of work performed, and the invoices for work completed. It was further noted that the Administrator of the Court approved the contractor's proposal for the call-up against the NMSO.

As noted previously, in the audit findings regarding clear statements of work, the statement of work for this call-up was vague, stating that the requirement was to, "...to provide consulting services and advice to the Administrator of the Court."

While the Administrator of the Court states that he believes the company engaged under the NMSO provided services other than Human Resources, review of contract files associated with the company engaged under the NMSO indicate that, save for this specific call-up, there is no record of it having provided services to the former Registry of the FCt other than for Human Resources related services.

It is the opinion of Internal Audit that there is little probability the Administrator of the Court could have been unaware of resource being provided to the former Registry of the FCt, or the nature of work being undertaken through this NMSO for Human Resources Support Services in that he had previously engaged the architect in 3 personal services contracts for architectural services, the architect had been at the former Registry of the FCt providing architectural services under 3 Specific Service Agreements, and there was a long standing social relationship between the Administrator and architect.

The social relationship is not considered to be unusual in that there was a longstanding business relationship between the two.

There is nothing in the file that would indicate that this relationship was a significant factor in the contracting process, in that the contractor was a qualified architect who had previously worked on the Federal Judicial building project, and had established an expertise in court room architecture through this work.

Internal Audit could not determine if the social relationship was a factor in selection, or an additional benefit of the qualified individual.

*It was found that senior former Registry of the FCt employees were aware that the Human Resources Support Services National Master Standing Offer did not include architectural services.*

Internal Audit recommends that the Courts Administration Service dedicate at least 1 senior individual to have responsibility for acquiring the requisite contracting knowledge, and that the individual(s) should know where to research contracting issues that do not occur frequently, and be tasked with keeping current with any changes to regulations.

Internal Audit recommends that the Courts Administration Service may wish to consider the establishment of a contracting committee (at least 3 individuals) to review contracts against established thresholds, and approve those which exceed a specific dollar amount. The committee would report all contracts to the senior management on a quarterly or semi-annual basis.

Internal Audit recommends that the Court Administration Service ensure that staff have appropriate training and are kept informed of their responsibilities and avenues for protected disclosures where they believe that contracting activities may be non-compliant with Government Contracting Regulations.

Courts Administration Service Management agreed with the finding and recommendations. The Service is modifying organizational structure to best meet these recommendations, and is incorporating the recommendation for certification into the revisions of policies and procedures. Currently, responsibility for contracting for services in CAS resides with the Manager, Materiel Management (Planning, Budgeting and Analysis Division).

## **Requirement to avoid contract splitting**

S. 11.2.7 of the Treasury Board Contracting Policy notes that:

"Contracting authorities must not split contracts or contract amendments in order to avoid obtaining either the approval required by statute, the Treasury Board Contracts Directive or appropriate management approval within the department or agency."

The review of the sample of contracts noted that 3 successive personal services contracts and a call up against a standing offer were each issued for the maximum amounts (per the understanding at that point in time of the contracting officers).

The review of the contract files indicated that the statement of work for the first personal services contract, was similar to the services provided under the preceding Specific Service Agreement through which the contractor was deployed to the former Registry.

Further, it was noted that there were similarities to a previous Specific Service Agreement under which the contractor, when he was a public servant, was deployed to the former Registry of the FCt.

It was noted in the file review that the same employee retired from the public service (at the end of the period of deployment to the former Registry of the FCt), and later returned as the contractor through Specific Service Agreements, Personal Services Contracts and call up against an NMSO.

Review of the contract files indicate striking similarities between the services provided under the first personal services contract, and the subsequent personal services contracts.

Review of the invoices of related to services provided indicates that the services and advice provided under the call-up against the NMSO were similar to those of the personal services contracts.

It was further found that the 2nd and 3rd personal services contracts were issued with the same statements of work, and the correspondence on file indicated that the 3rd personal service contract was entered into as there was an understanding that an amendment to the ceiling amount in the previous contract would not be allowed.

In response to internal communications regarding contract splitting, it had been suggested that the deliverables could be modified to incorporate the changing security requirements in the wake of the terrorist attacks of September 11th. Internal Audit also noted that an attempt in February of 2002 to secure Treasury Board approval for a multi-year non-competitive contract as part of a submission related to national security. This was abandoned, according to interviews, as the approval process would have taken too long.

It should be noted that the value of this proposed contract was \$583,000 and was to run from 2002 to 2005. In April of 2002, the former Registry of the FCt began the competitive process of securing architectural services for the Federal Judicial Building. The value of this contract was \$568,415, and was to run from 2003 to 2008.

Interviews indicated that the consecutive contracts were in some cases providing services for projects that had not been completed during the life of the previous contract.

It was noted that documentation exists on file which indicates that former Registry of the FCt officials were knowledgeable of the requirement to avoid contract splitting.

*It was found that contracts were split in order to avoid the competitive process.*

Internal Audit recommends that the Courts Administration Service dedicate at least 1 individual to have responsibility for acquiring the requisite contracting knowledge, and that the individual(s) should know where to research contracting issues that do not occur frequently, and be tasked with keeping current with any changes to regulations.

Internal Audit recommends that the Courts Administration Service may wish to consider the establishment of a contracting committee (at least 3 individuals) to review contracts against established thresholds, and approve those which exceed a specific dollar amount. The board would report all contracts to the senior management on a quarterly or semi-annual basis.

Internal Audit recommends that the Court Administration Service ensure that staff have appropriate training and are kept informed of their responsibilities and avenues for protected disclosures where they believe that contracting activities may be non-compliant with Government Contracting Regulations.

Courts Administration Service Management agreed with the finding and recommendations. The Service is modifying organizational structure to best meet these recommendations, and is incorporating the recommendation for certification into the revisions of policies and procedures. Currently, responsibility for contracting for services in CAS resides with the Manager, Materiel Management (Planning, Budgeting and Analysis Division).

## CONCLUSIONS

Audit results show that there was not adequate control of the contracting function with respect to the procurement of architectural services between October of 1998 and February 2004, and identified areas where the former Registry of the FCt of Canada was not in compliance with the Treasury Board Policy on Contracting.

Internal Audit is of the opinion that accountability for non-compliance with Treasury Board Contracting Policy rested with the office of the Administrator of the Court. Interviews noted that the decision not to seek competitive bids for the personal services contracts was made by the Administrator of the Court, as was the selection of the contractor. The agreement between the former Registry of the FCt and a Human Resources consulting firm was approved by the Administrator of the Court, as were status reports and invoices.

Internal Audit note that it was an agreement between the Administrator of the Court and the contractor that resulted in per diem rates being set at a specific level, and resulted in an increase in the per diem rate in order to provide the contractor with wage parity in comparison with former Registry of the FCt employees of the same level.

Further, that the Administrator of the Court determined that the value of the 3 personal services contracts should be at the maximum allowable under their understanding of the Government Contracts Regulations.

It should further be noted that it was the responsibility of the Administrator of the Court to ensure that the management control framework was in place and functioning effectively. It is the opinion of Internal Audit that, following the departure of the contracting officer, the dispersal of contracting responsibilities to staff who were not specialists in procurement allowed for weaknesses in the framework which in turn led to these control failures.

Internal Audit is of the opinion that for the period under review, the former Registry of the FCt was attempting to obtain the services of a specific contractor, without resorting to the competitive process.

Specifically, the audit found that a process of contract splitting had occurred, in which personal services contracts and a call up against a National Master Standing Offer were used in order to engage a single architect in a set of projects over multiple years. The ongoing nature of the work, and the breadth of the projects worked on, suggest that a long term contracting arrangement should have been entered into sooner.

It found that inadequate consideration had been given to the fact that the architect engaged was a former public servant in receipt of a pension, and this was not factored into the contracting process. As a result, the former Registry of the FCt exceeded its delegated authorities on all 3 of the personal service contracts.

Internal Audit found that the Administrator of the Court and senior management of the former Registry of the FCt had been informed in writing of the section in the Treasury Board Policy with respect to contracting with former public servants as early as December of 1999, and verbally in 2000, one month before the first personal services contract for \$100,000 had been awarded.

Internal Audit found that senior management of the former Registry of the FCt were knowledgeable of Treasury Board policy regarding contract splitting, and yet engaged the contractor on 3 non-competitive contracts and a call-up against a national master standing offer, where the deliverables were in some cases identical, over a period of years.

Internal Audit established that there was a social relationship between the contractor and the Administrator of the Court. In itself, this is not considered to be unusual in that there was a longstanding business relationship between the two.

There is nothing in the file that would indicate that the relationship between the Administrator of the Court, and the architect was a significant factor in the contracting process.

It should be noted that the contractor was a qualified architect who had previously worked on the Federal Judicial building project, and had established an expertise in court room architecture through this work. Internal Audit could not determine if the social relationship was a factor in selection, or an additional benefit of the qualified individual.

It should be considered as a best practice that contract files should note situations where there is, or may be perceived to be, a social relationship between contractor and decision making employees of the Service.

Decisions to award non-competitive contracts should be clear in their justification of this approach, such that even if there is a perceived social relationship, there is prima facie justification of the appropriateness of the award of the contract.

Total avoidance of contracts (non-competitive and competitive) with anyone with whom there is a real or perceived social relationship could have an impact on adherence to the spirit of the contracting policies and regulations in that it may unfairly prevent the contractor who provides best value for money from participating in the process.

The audit also identified ways of improving the management of the contracting function, which CAS management have agreed to, and have established an action plan for their implementation.

Prior to the commencement of this audit, CAS management had taken several significant steps towards improving the management control framework, including organizational restructuring through the amalgamation of the 2 former registries, revisions to delegated authorities, and revisions to policies and procedures related to contracting. Internal Audit further notes that the establishment of an independent Internal Audit Directorate was one of the improvements to the internal control regime implemented by CAS senior management.

Internal Audit have recommended further improvements to the management and monitoring of contracting activities in order to strengthen the internal control framework.

Following communication of the audit findings, the Courts Administration Service has committed to, and begun to implement, a management action plan which addresses the findings and recommendations of this audit.

## **Appendix A - audit objectives and criteria**

The objective of this engagement was to review a series of contracts awarded for architectural services, in order to:

- Ascertain which, if any, of the Government Contracting Regulations, former Registry of the Federal Court, or Courts Administration Service policies, procedures and/or directives were breached;
- Identify any control weaknesses that may have allowed a breach of regulations, policies, procedures and/or directives; and,
- Recommend control improvements to reduce the likelihood of future breaches of the control framework, and minimize the exposure of the Courts Administration Service should a material breach of regulations, policies, procedures and/or directives occur.

Criteria were drawn from the following sources:

- Government Contracts Regulations
- Treasury Board Secretariat Contracting Policy
- Courts Administration Services Policies, Procedures and Directives related to Contracting and Procurement
- Policies, Procedures and Directives on Contracting and Procurement of the former Registry of the FCt

## Appendix B – management action plan matrix

PROCESS: CONTRACTING – ARCHITECTURAL SERVICES					
FINDING		AUDIT RECOMMENDATIONS	MANAGEMENT ACTION	POSITION ACCOUNTABLE	DATE FOR COMPLETION
Treasury Board Contracting Policy, (s. 16.1.2), requires a clearly defined statement of work. For the first personal services contract of this review, it was noted that the statement of work and deliverables were generally vague.	<b>Recommendations Apply to All Findings</b>	<p>It is recommended that a set of Courts Administration Service policies and procedures for contracting be updated or established and made available to all staff.</p> <ul style="list-style-type: none"> <li>○ Policies and procedures should require that all contracts contain clear milestones and defined deliverables, together with pre-determined reporting requirements.</li> <li>○ Consideration should be given to recording justification for exceptions under 10.2.1 Section 6 of the Government Contracts Regulations, seeking competitive bids where it is cost effective to do so, even if the value is below the limits of s. 10.2.1, and ensuring that contract files record the solicitation of such bids, and/or known rates of contractors.</li> </ul>	<p><b>Policies and procedures</b> The Courts Administration Service has prepared an updated set of draft policies and procedures for contracting, which is consistent with Treasury Board Contracting Policy. Expert advice sought to review policy and procedures.</p>	Director Planning, Budgeting & Analysis	Spring 2005
The call up for architectural services under the Human Resources National Master Standing Offer were non-descript, such that a 3rd party reviewer could not even determine what services were being provided.		<p>At least 1 senior individual has dedicated responsibility to acquiring the requisite contracting knowledge. The individual should know where to research contracting issues that do not occur frequently, and be tasked with keeping current with any changes to regulations.</p>	<p><b>Contracting Officer</b> The position of a senior contracting officer is currently in classification.</p>	DG Finance & Corporate Services	Expected staffing late spring 2005
The former Registry of the Federal Court exceeded their authorities, without Treasury Board approval, for each personal services contract in the sample used for this audit. Authorities for architectural services allow		<p>The Courts Administration Service may wish (dependant upon size and extent of contracting) to establish a contracting committee (at least 3 individuals) to review contracts against established thresholds, and approve those which exceed a specific dollar amount. The committee would report all</p>	<p><b>Contracting Committee</b> Expert advice sought. Decision to be made when the Senior Contracting officer is hired.</p>	DG Finance & Corporate Services	Late spring 2005

PROCESS: CONTRACTING – ARCHITECTURAL SERVICES				
FINDING	AUDIT RECCOMENDATIONS	MANAGEMENT ACTION	POSITION ACCOUNTABLE	DATE FOR COMPLETION
contracts up to \$100,000 to be sole-sourced. Where the contractor is a former public servant in receipt of a pension, however, this authority is limited to a maximum of \$25,000.	contracts to the senior management on a quarterly or semi-annual basis.			
Treasury Board Contracting Policy, (s. 16.8.1), requires fairness in contracting with former public servants in receipt of a pension. The audit indicates that others architects had expressed an interest in providing services for the planned Federal Judicial Building, however the opportunity was not opened to competitive bidding until February 2003, by which time, 4 non-competitive contracts for these services had already been awarded.	All contracts should require certification, by the contractor, in respect to their status in relation to former public servants. Contracting policy and procedures should direct Contracting Officers to refer to the <i>Curriculum Vitae</i> for indication of former public service. Where there is certification of former public service, or the <i>Curriculum Vitae</i> indicates former public service, the Contracting Officer should obtain Human Resources Branch approval for the proposed contract, as well as a waiver from the contractor allowing Human Resources to contact the contractor's former department for any additional information required to calculate abatements.	<b>Certification of former public servants</b> Checklists to be added to all personal services contracts requesting former Public Servant status.	Director Planning, Budgeting & Analysis	Jan 2005.
Treasury Board Contracting Policy, (s. 11.2.7), requires that contracts not be split in order to avoid obtaining the approvals otherwise required. The former Registry of the Federal Court entered into 4 consecutive sole-source contracts directly or indirectly with a single contractor. The Statements of Work for 2 of the 4 were identical, and the Statements of Work for the other 2 contained variations and some overlap of requirements.	Either as a part of updated policies and procedures, or independently, roles and responsibilities of each function, in relation to contracting should be defined.	<b>Roles &amp; Responsibilities</b> Memo issued on Dec. 7, 2004 by DG, Finance and Corp. Services. Contracting authorities were suspended Mar 3, 2004 and will remain suspended until adequate training is provided.	DG Finance & Corporate Services	
	Internal Audit recommends that the Court Administration Service ensure that staff have appropriate training and are kept informed of their responsibilities and avenues for protected disclosures where they believe that contracting activities may be non-compliant with Government Contracting Regulations.	Once Senior Contracting officer is hired, the training program will be developed.	DG Finance & Corporate Services (as Ethics Officer)	