



**Audit of**

**CONTRACTING AND FINANCIAL MANAGEMENT PRACTICES**

**Canadian Foreign Service Institute**

August 2006

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## **1.0 EXECUTIVE SUMMARY**

### **Introduction**

The Audit Division was requested to conduct an audit of contracting and related financial management practices within the Canadian Foreign Service Institute (CFSI). As described in the Terms of Reference, the audit was requested as a result of a submission by CFSI of a Confirming Order to authorize payment to a contractor. This report includes our analysis of contract management procedures and practices in CFSI, events surrounding the period in which the Confirming Order was prepared, and subsequent decisions taken. This audit was undertaken during the period from August 19, 2005 to December 16, 2005.

In 2004-2005 CFSI issued 342 contracts for services. The total value of services paid to contractors was \$8.6 million which represents 75% of CFSI's operating budget.

The audit was completed in two phases. During the first phase of the audit the focus was on operations within the Centre for Language Training (CFSL) and the Centre for Intercultural and Effectiveness Training (CFSC). Phase I of the audit encompassed a review of CFSL and CFSC's core service training contracts and established a chronology of events (see Appendices A and B) related to discussions between DFAIT and Public Works and Government Services Canada (PWGSC). There were two key contracts<sup>1</sup> reviewed during this phase. Phase I also included an assessment of the operating and managerial controls of CFSL and CFSC. Phase II entailed an assessment of contracting and financial functions within all six components of the CFSI.

Audit work completed indicated that there was no malfeasance or attempts to subvert contracting or financial regulations.

### **Overview: Phase I**

Due to the high dollar value (i.e. over \$2,000,000), the contracts and RFPs initially reviewed during Phase I of the audit were processed through PWGSC, and as such were subject to processes external to DFAIT. As identified during the initial audit work completed, the complexity of the contracts, the external relationship with PWGSC as the procurement authority, and the extended time frames involved (i.e. contracts initiated in 1998 and in 1999 - FLIO and Graybridge respectively) resulted in an environment where senior management oversight and coordination between departments was needed throughout the lifespan of the contracts. The renewal process, specifically the Request For Proposal (RFP) process for both language training and intercultural effectiveness training continued for more than two years. Both DFAIT and PWGSC must bear the

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<sup>1</sup> Foreign Language Institute of Ottawa and Graybridge Malkam

responsibility for these extended time frames which \*\*\* is indicative of an area which requires increased monitoring by management.

At a fundamental level, oversight and monitoring of significant contracts critical to the department's core objectives and training was dysfunctional. With respect to language training and the end of the FLIO contract, where contracting advice was sought, the solutions provided by departmental procurement specialists were not viewed as helpful due to the limited number of options offered and ultimately, never used. At the time of the audit, no process existed for departmental monitoring and reporting of contracts issued by PWGSC on behalf of the department. Consequently, there was a significant gap in the departmental contract processing and oversight mechanisms for these large dollar contracts processed through PWGSC. Large dollar contracts entered into by PWGSC on behalf of the department need to be reviewed, approved and monitored by the DCRB.

Management has taken initiative to address this issue. Additionally, it is our understanding that the DCRB was incorporating a larger oversight role with respect to future PWGSC contracts. The audit team reviewed documentation from various sources (e-mails, interviews and recorded meeting minutes) pertaining to a presentation by the CFSI to the DCRB on September 1, 2004 on the topic of CFSI contracting. The audit team reviewed the slide presentation materials used for the meeting and noted that the materials make no reference to contracts nor RFPs processed through PWGSC on behalf of DFAIT. Similarly, the minutes of that meeting do not reflect any discussions by participants which pertain to contracts nor RFPs processed through PWGSC on behalf of DFAIT. In addition, the descriptions provided to the audit team by participants at this meeting with respect to the content of discussions at the close-out of the presentation were contradictory.

Communication among the key players was faulty throughout the process. There was insufficient clarity or force of messaging through the various lines of authority. Consequently, there was a significant gap between the messages being delivered by the \*\*\*, CFSI and as understood by Human Resources management. It was because of the limited upward information flow, that HR management lacked an appreciation of the seriousness of the situation and, as such, there was insufficient oversight and challenge of contracts critical to the successful functioning of CFSI and the delivery of its programs.

In order to provide effective stewardship within an organization, management has the primary responsibility for assessing risks and in response to those risks, to maintain and monitor controls within an organization. Therefore, it is significant that progress on contracts that were critical to the success of CFSI were not monitored and discussed regularly at senior levels between HR and CFSI.

## **Overview: Phase II**

### **Contract Management**

The audit revealed a significant number of instances where CFSI could not demonstrate that it was in compliance with departmental and central agency policies and procedures with respect to its contracting activities. These instances occurred in the areas of outsourcing justification, contractor selection, sole-sourcing justification, contract amendments, contract splitting, employer-employee relationships, performance evaluation and documentation. CFSI needs to improve the accountability and management framework for contracts from inception and bid tendering to close-out and to introduce rigour into its financial practices to ensure value for money on services received. As a result, a conclusion could not be made that DFAIT received value for money from the contracting practices followed.

The current audit of CFSI has underscored a significant gap in the management framework and oversight by the DCRB of large dollar contracts processed through PWGSC for all major DFAIT contracts. Previous audits have noted weaknesses in departmental reporting on contract activities and this report includes a recommendation aimed at providing “an early-warning mechanism” for senior management of contracting initiatives at risk.

### **Financial Management**

The audit indicated a number of instances of non-compliance with departmental procedures relating to Sections 32 and 34 of the Financial Administration Act. With respect to Section 32 there were instances of commitment forms not being available, not being quantified, and being signed following the commencement of services. There was no indication on the commitment forms that the signature was authorizing the commitment of funds. Section 32 non-compliance increases the risk that commitments could be made in excess of unencumbered balances. With respect to Section 34 there were instances of services not agreeing to the contract, hourly rates being charged in excess of contractual rates, questionable accuracy of Monthly Attendance Reports, no signature cards for personnel approving invoices and no indication that approval of invoice constitutes Section 34 approval. These examples of Section 34 non-compliance increase the risk that payments are approved for services that were not received.

The audit identified weaknesses with respect to financial management for both the FLIO and Graybridge contracts. The audit team was not able in all instances to confirm that the services reviewed were provided in accordance with the terms of the contracts, including adherence with the Financial Administration Act. The audit provides specific recommendations for both CFSL and CFSC.

The previous departmental Audit of Contracting conducted in 2004 found issues throughout DFAIT similar to those identified above. For example, justification for the use of contractors over other forms of engagement was seldom provided; lack of sole-source justification; limited selection process documentation; contracts awarded under the thresholds with amendments to increase the contracts over the \$25,000 or NAFTA thresholds; obvious employer-employee relationships; contracts signed after work had begun; contractor performance not evaluated; no consistent use of the managerial checklist and lack of adequate file documentation.

Overall, the key contracts in CFSI were under-managed. While communications weaknesses and departmental contracting “systems” weaknesses have been identified throughout the report, which resulted in a failure to trigger the appropriate senior management response to these contracting issues, CFSI management nevertheless bears prime responsibility for the conditions of these contracts. Phase II of this audit identified how CFSI’s own contracting and financial management processes were weak. The audit identified a significant number of instances where there was no evidence that contract deliverables had been received in accordance with the contract.

Significant improvements are required in both CFSI’s systems and in the department contracting and financial oversight systems.

### **Management Comments**

#### **HCM – Human Resources**

The Human Resources Branch (HR) already implemented most (and more) of the audit recommendations to bring into line management practices related to contracts and finance of the Institute. The enhanced monitoring and controls will ensure that policies and regulatory processes are followed rigorously. Indeed, although the audit was limited to the Confirming Order related to particular contracting practices, senior management went beyond the scope of the audit and reviewed the overall managerial role and responsibilities of the Institute. Furthermore, in September 2005, all financial and contracting activities for the Institute were transferred to the branch AMA (HAM).

It is felt, however, by members of the HCM senior management team that the findings included in the Audit Report, in its present format, could be misinterpreted and emphasize on items taken out of context. Conclusions made by the audit team are not always clear from the methodology, the chronology and/or the observations available in the report. Finally, it should be noted that an evaluation has simultaneously been conducted to determine the efficiency and effectiveness of the current training/development program delivery by the four schools of the Institute. Recommendations and action plan were drafted for implementation in 2006-07 (awaiting final report).

## **SCM – Corporate Services**

The audit has focussed to a great degree on the contracting processes conducted by CFSI rather than the substantive reasons for the breakdown in the process. As such, the conclusions relating to the FLIO contract for example do not provide an adequate explanation of the necessary Treasury Board authorities or the program area decisions, which allowed the contract to reach the point where the contract authorities were exceeded. This case exposed the potential risk to the department if measures were not undertaken to establish adequate controls for those contracts managed by PWGSC. The department has since developed a strengthened contract management control framework where Centres of Expertise are the single windows to PWGSC on procurement activities. In addition, the organizational capacity has been augmented with a new structure to deal with a revised and streamlined delegation of authority and broader government procurement reform.

The audit provides little reference to the role played by the Departmental Contract Review Board in providing recommendations to the Deputy. Although this does not directly contradict the observation that there was a DCRB oversight gap on contracts managed by the PWGSC on behalf of the Department, it does demonstrate an active role played by the DCRB in bringing the problem to the attention of senior management. It was the DCRB and its Secretariat's recommendations, which have led to the strengthening of the Department's overall contracting procedures.

## 2.0 MAIN POINTS

### Contract Management

- The audit team found instances of non-compliance with Treasury Board and departmental contract management policies and procedures in the areas of procurement strategy and contract administration.
- There was inadequate justification for the procurement strategy used. In all divisions there was inadequate justification for outsourcing and in most divisions there was inadequate justification for non-competitive procurement.
- There was inadequate documentation to demonstrate that the contracts had been appropriately administered. In non-competitive procurement cases, proposals from contractors were missing in most divisions. In competitive procurement cases, solicitation documentation, Record of Bidders, Selection Criteria and Evaluation Calculations were missing in most divisions. The Managerial Checklist for Services was not completed in fifty percent or more of the files in each division. The Procurement Reporting Checklist was not completed in the majority of files in three of the divisions. In two divisions the majority of contract amendments were not adequately justified and in four divisions an internal estimate of time and cost to carry out the amendments was not done. None of the files contained the Employee or Employer Questionnaire that is required when contracting for the services of an individual. None of the files contained a performance evaluation that should be completed at the conclusion of a contract.
- These instances of non-compliance demonstrate that increased controls are necessary to ensure that required policies are being followed.
- CFSI may not always have received value for money from the charges made by Graybridge pursuant to the contract. In thirteen of the twenty-one events reviewed (sixty-two percent) the trainer lived in the same area where the event was held; however, travel costs were included in the fees charged for trainers whether or not travel costs were incurred by the subcontractor. Audit interviews indicated that subcontractor fees were marked-up by an average of thirty-one percent, ranging from zero to sixty-six percent. Prior to the current audit, the right to audit had not been exercised. These situations should be addressed when new contracts are negotiated.
- The audit team learned that no process exists for departmental monitoring and reporting of contracts issued by PWGSC on behalf of the department. Large dollar contracts entered into by PWGSC on behalf of the department need to be reviewed, approved and monitored by the DCRB.



## Financial Management

The audit identified weaknesses with respect to Financial Management.

- Invoices for some services rendered by the Intercultural Effectiveness Training contractor could not be matched to the contract. Consequently, the audit team can not provide an assurance that the amounts charged by the contractor were in accordance with the payment terms specified in the contract.
- The audit identified problems with the accuracy of the hours being charged for trainers' services. There is a risk that CFSL paid for services that had not been delivered. This was because there is no standard procedure for completion of Monthly Attendance Reports (MAR), a key control document that supports charges by the Foreign Language Training contractors for teaching time spent by trainers.
- In the case of the IET contract a potential weakness in the performance of Section 33 (FAA) for expenditures was identified. Prior to the introduction of the Automated Contracting System no control features related to total contract value existed in IMS. As a result, the potential existed to process payments exceeding the authorized contract value based on a Section 34 approval being provided. Section 33 review procedures did not take the contract value into consideration. During a meeting held at the mid-point of the audit, the audit team discussed the issue with senior financial officers. The audit team was advised that no payments were made under the contracts that resulted in the contract values being exceeded. SMD has updated its Section 33 procedures for contracts that were issued prior to the implementation of the Automated Contracting System in order to factor in contract value availability.

### 3.0 INTRODUCTION

The Canadian Foreign Service Institute (CFSI) was established by the Government of Canada in 1992. CFSI's range of services address the critical performance requirements in the areas of Intercultural Competence, Foreign Language Skills and Professional Skills and Knowledge.

The Intercultural Competence activities are delivered through the Centre for Cultural Learning (CFSC). Training programs are designed to maximize the acquisition of the intercultural skills vital to a successful international experience. Trainees come from government departments and agencies, non-government organizations (NGOs) and a number of private sector entities that have international involvement. CFSC training activities are being delivered by a contractor, Graybridge Malkam (Graybridge), an Ottawa based organization.

The Foreign Language Skills activities are delivered through the Centre for Language Training (CFSL). CFSL provides classroom or workplace, full-time or part-time proficiency-oriented language training to government personnel, particularly DFAIT, Citizenship and Immigration Canada and Canadian International Development Agency employees, their spouses and employees of other government departments in more than 40 languages. CFSL training activities are being delivered by two contractors, Ecole de langues La Cite (la Cite) for Official Languages Training and Foreign Language Institute of Ottawa (FLIO) for all other languages.

The Centre of Learning for Professional Services (CFSD) provides a setting where professional learning is organized. The areas of specialization at the Centre include: management development, organizational development, core foreign service skills, international business development, trade and economic policy, international security and cooperation, and public diplomacy.

The Centre for Corporate Services Learning (CFSS) is responsible for the analysis, development, design, delivery and evaluation of training for: Information Management Technology, Integrated Management System (IMS), Human Resources, Financial Management, Property and Materiel Management, Foreign Service Directives, Occupational Health and Safety, Security, Entry Level Management Consular Officers, Information Assistant Certificate Programme and the Locally Engaged Staff Training Strategy. The Centre also has functional responsibility for Consular training.

At the time of the audit the Area Management Office (CFSM) had been responsible for management services for CFSI, which includes contacting, financial, staffing, information technology, and facilities management services. These functions have now been transferred to HAM.

## Background<sup>2</sup>

### Foreign Language Institute of Ottawa

During Phase I the audit focussed on two large contracts and of those, the foreign language training services in particular, were critical to the success of the department. Due to the high dollar value (i.e. over \$2,000,000) these contracts and RFPs initially reviewed during the audit were processed through PWGSC, and as such they were subject to processes outside of DFAIT. The Request For Proposal (RFP) process for these contracts continued for more than two years; although PWGSC accepts a 1 1/2 year time frame as standard for RFPs of similar complexity. Both DFAIT and PWGSC must bear the responsibility for these extended time frames which \*\*\*is indicative of an area which requires increased monitoring by senior management. The audit has identified a significant gap in the departmental contract processing and oversight mechanisms for these large dollar contracts processed through PWGSC.

Ultimately, on May 31, 2005 the foreign language training services contract expired. However, as the original contract was nearing its end date, the right levels of management were not brought in to move the process along, despite ongoing contracting problems. During the ensuing period, FLIO continued to deliver language training and testing services without a contract being in effect.

In July 2005, CFSI decided that a Confirming Order in the amount of approximately \$250,000 per month would be issued to pay three monthly invoices (June to August) until the completion of the RFP process, expected to be September 2005. Audit work completed indicates that there were no attempts to conceal events nor to circumvent policies. The preparation of the Confirming Order, including prior approval by HCM, and review by departmental procurement specialists were done transparently.

An e-mail dated April 28, 2003 from PWGSC states *“PWGSC is ultimately responsible for this procurement as they are the procurement authority....DFAIT is the technical authority...”*. During interviews at PWGSC the audit team confirmed that an option to utilize a Confirming Order through PWGSC could have been pursued. PWGSC would have required that DFAIT meet its requirements for that process. DFAIT authorities however, did not request that a Confirming Order through PWGSC be done.

In particular, PWGSC as the contract authority was not required by DFAIT to remediate a problem that PWGSC was, in part, responsible for. It is significant that there was not regular and frequent dialogue with and among senior management and with departmental procurement specialists on the delays within PWGSC, on the need for multiple extensions, and on alternatives should they be required.

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<sup>2</sup> See Appendices A and B

## **Graybridge Malkam**

This audit report notes that this situation did not arise for a second major contract which provided intercultural training (Graybridge), managed by CFSC. While this contract had also been extended six times by PWGSC, no Confirming Orders were required to continue the contracted work.

Our interviews and review of documentation identified that on several occasions the Director, CFSC communicated concerns to PWGSC with respect to the lengthy IET RFP process and had briefed the DG, CFSI. Beginning on September 16, 2004 CFSC requested confirmation from PWGSC that either the RFP be completed in time for a contract award on or before December 31, 2004, or that PWGSC further extend the contract. PWGSC assured CFSC that if they were unable to meet the target date, they could extend the Graybridge contract to ensure no interruption of services. In June 2005, PWGSC was considering an extension to the Graybridge contract to March 31, 2006, to facilitate negotiations with CIDA. In late June, PWGSC informed CFSC that they were not extending the current contract to 2006.

In the summer of 2005 an internal RFP was prepared by SPPG, in collaboration with CFSC, to bridge the gap until PWGSC awarded a multi-year RFP. The audit team was advised that this initiative was raised in a meeting held with PWGSC, DFAIT and TBS senior officials. These discussions, held in mid-August 2005, were undertaken to ensure continuity of services within CFSC. The internal bridging RFP was posted by SPPG to MERX on August 17, 2005 and subsequently pulled off MERX the following day by the Director, SPPG. In the interim, a final extension was negotiated with PWGSC to extend the Graybridge contract to November 30, 2005. On October 18, 2005 the internal RFP was again posted on MERX, however, the additional two month gap created by the removal of the RFP from MERX (August 18 to October 18, 2005) contributed to a tight time line in which CFSC was to award a bridging contract before the November 30 contract expiry date.

Appendix B of this report provides a background chronology of this contract and on a Request for Proposal which was being developed at the time the audit was initiated. Appendix H provides a time line for completion of the RFP for intercultural training based on PWGSC estimates.

## 4.0 OBJECTIVES

The audit objectives were to:

- assess the management control framework for the procurement function within CFSI to ensure compliance with Government Contract Regulations;
- determine if the processes and procedures for contract management and personnel management (where applicable) are in compliance with the applicable acts, regulations, policies and procedures of the department and Treasury Board; and
- to document and evaluate internal controls and processes and procedures used to issue, manage and monitor contracts.

## 5.0 SCOPE

The audit scope included the following:

- management of contractual issues;
- management of amendments and change orders;
- payment activities; and
- staffing issues including, but not limited to, employer/employee relationships and hiring practices.

The audit scope for Phase I consisted of three<sup>3</sup> awarded service contracts to the following firms:

1. Foreign Language Institute of Ottawa, managed by CFSL
2. Ecole de langues La Cite, managed by CFSL
3. Graybridge International, managed by CFSC

The audit scope for Phase II consisted of a review of contracts within each of the six divisions within CFSI, excluding the three major contracts that were subject to Phase I activities.

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<sup>3</sup> In 2003-04 CFSI issued 298 contracts for services.

## Scope Exclusions/Limitations

The audit findings and conclusions are based on a “point in time” review of program files and financial transactions representing the period from April 1, 2004 to July 31, 2005. This audit was undertaken during the period from August 19, 2005 to December 16, 2005.

The audit did not include goods contracts.

Commitment forms for the 2003/2004 fiscal year could not be located. As a result, the audit team was not able to complete various verification procedures to determine whether commitment activities were performed in accordance with Section 32 of the FAA. (An observation related to this issue is contained in Section 7 of this report.)

In December 2005 the department implemented the Automated Contracting System (ACS), as a component of the Integrated Management System. The audit did not include a review of the ACS.<sup>4</sup>

Testing of transactions for Ecole de langues La Cite was limited due to our determination that the contract was not tendered through PWGSC, but instead had followed DFAIT procurement processes.

Testing related to potential split contracts was based on a review of transactions using materiality and other factors. A statistical sampling approach was not used.

(For additional details see following section entitled Methodology.)

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<sup>4</sup> The Automated Contracting System is referenced in the management responses contained in Section 7 of this report.

## 6.0 METHODOLOGY

The 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.

Tailored audit verification checklists were developed for transactions tested in Phases I and II. This involved interviews with senior personnel to gain an understanding of the processes involved in contracting and contractor invoice processing.

The audit used key reference criteria drawn from various sources including:

- Treasury Board Contracting Policy;
- Government Contracts Regulations;
- Financial Administration Act;
- Departmental contracting policies and procedures;
- Values and Ethics Code for the Public Service; and
- the PWGSC Supply Manual.

In particular, because key contracts included in the audit were initially procured through PWGSC and as such are subject to their policies, the audit team has made extensive reference to a policy notification entitled "*Confirming Orders and Contracts Involving Pre-contractual Work - Revision*".<sup>5</sup>

Transactions were selected from the departmental financial system using statistical sampling. One section of testing which focussed on an assessment of potential contract splitting, used materiality as a basis for transaction review rather than statistical sampling. In all instances, after transactions were selected, hard copy files were reviewed to determine their compliance with relevant financial and contracting policies and guidelines. This review supplemented interviews conducted to assess internal controls and various procedures used in payment processing and contract management.

Interviews were conducted with selected former and current employees associated with the CFSI contracting process: CFSL, CFSC, CFSM, CFSI, HAM, SPPG and senior management. The information received during interviews and pertinent correspondence gathered through internal file review, were used to develop a chronology for each contract (Appendices A, B, C). This involved reviewing documentation maintained at the Foreign Service Institute and elsewhere in the department which support payments made against the contracts.

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<sup>5</sup> [www.pwgse.gc.ca/acquisitions/text/pns/pn53r-e.html](http://www.pwgse.gc.ca/acquisitions/text/pns/pn53r-e.html)

The documentation reviewed included:

- presentations to the Departmental Contract Review Board,
- Confirming Order database maintained by SPPG,
- Corporate Organizational Charts,
- minutes of meetings and diaries, and
- e-mail correspondence.

The audit scope also included a review of the Management Control Framework practices that support the contracting function at CFSI.

In addition to the audit, an evaluation was launched concurrently.

The audit was conducted at the offices of Foreign Affairs Canada - National Headquarters, and the Canadian Foreign Service Institute (Bisson Campus, Quebec), the offices of Graybridge, and the offices of PWGSC.

The audit was conducted during the period from August 19, 2005 to December 16, 2005.

## **Sample Selection**

A structured statistical sampling approach was used in order to ensure that the sample represented as broad as possible cross section of transactions.

## **Phase I**

Three databases were created using a specialized audit software package<sup>6</sup>, as follows:

- Data was extracted from the departmental financial system for vendor accounts for the period April 1, 2004 to July 31, 2005.
- The total population for the three contractors was 1,853.
- The database was stratified with large dollar value transactions being included in the sample.
- ACL was used to randomly select transactions for each contractor as follows:
  - FLIO ( 64 transactions)
  - Graybridge ( 69 transactions)
  - la Cite ( 73 transactions)

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<sup>6</sup> Audit Command Language (ACL)



The sample consisted of 206 transactions, representing approximately 11% of the total number of payments (population) in the audit scope, as follows:

	<b>FLIO</b>	<b>Graybridge</b>	<b>La Cité</b>	<b>Total</b>	<b>%</b>
<b>Population</b>	1,173	330	350	1,853	100%
Amount	\$2,735,668	\$3,795,080	\$1,744,152	\$8,274,900	
<b>Sample</b>	64	69	73	206	11%
Amount	\$337,204	\$1,193,850	\$1,010,165	\$2,541,219	

Our review of Ecole de langues La Cite consisted of financial testing and preparation of a chronology (Appendix C) which outlines the internal RFP process managed by SPPG. Testing was limited due to our determination that the contract was not tendered through PWGSC, but instead had followed DFAIT procurement processes. Secondly, the materiality of the contract is significantly less than that of the other two firms reviewed during Phase I of the audit.

<b>CONTRACTS OVERVIEW</b>		
<b>FLIO</b>	<b>\$10.3 million</b>	November 1998 to May 2005
<b>Graybridge</b>	<b>\$19.5 million</b>	October 1999 to November 2005
<b>La Cité</b>	<b>\$2.9 million</b>	October 2002 to September 2005

## **Phase II**

A single database was created using ACL for all contract transactions for each of the six divisions at the Institute (CFSI, CFSL, CFSC, CFSS, CFSD, and CFSM). Transactions relating to the three major contracts that were subject to audit during Phase I were excluded from the database.

- Data was extracted from the departmental financial system for the period April 1, 2004 to July 31, 2005.
- The total population was 909.
- The database was stratified as follows with the transactions being included in the sample:
  - All transactions in the Director General's fund centre
  - All transactions greater than \$20,000
- ACL was used to randomly select 66 transactions for review from the database.

Details relating to the sample selected for audit are:

	<b>CFSI</b>	<b>CFSL</b>	<b>CFSC</b>	<b>CFSS</b>	<b>CFSD</b>	<b>CFSM</b>	<b>Total</b>	<b>%</b>
<b>Population</b>	4	63	33	153	625	31	909	100
Amount	\$3,335	\$204,029	\$97,853	\$698,526	\$2,075,855	\$55,372	\$3,134,970	
<b>Sample</b>	4	2	5	12	40	3	66	7.3
Amount	\$3,336	\$31,243	\$28,045	\$150,347	\$214,877	\$11,514	\$439,362	

### Sample Selection to Test for Potential Contract Splitting

- Data consisting of contract information was reviewed for the period April 1, 2004 to December 31, 2005.
- The data was organized by contractor into a separate database.
- A statistical sample was not used in this instance.
- A list of contractors was prepared according to the dollar value of the contracts, the timing of the contracts and the scope of work described in the terms and conditions of the contracts.
- The review of terms and conditions of contracts was done to note similarities between the contracts which could be indicative of a “split contract”.
- During briefings with senior management a sample listing of contracts was provided. Key criteria to apply in the review of additional contractors and a suggested approach for use in follow-up by management were provided.

## **OBSERVATIONS AND RECOMMENDATIONS**

## **7.0 OBSERVATIONS AND RECOMMENDATIONS**

### **7.1 Contracting for “Best Value”**

The audit revealed a significant number of instances where CFSI could not demonstrate that it was in compliance with departmental and central agency policies and procedures with respect to its contracting activities. These instances occurred in the areas of outsourcing justification, contractor selection, sole-sourcing justification, contract amendments, contract splitting, employer-employee relationships, performance evaluation and documentation. As a result, a conclusion could not be made that DFAIT received value for money from the contracting practices followed.

#### **Outsourcing Justification**

When a decision is made to engage a contractor there should be documentation on file to support the analysis that was undertaken to demonstrate that contracting out is the most economical and feasible way to proceed. In 86% of the files reviewed there was no justification for the decision to engage a contractor to perform the work. In the other files there was a brief explanation of the reasons, but there was little written evidence that an analysis had been done of the available options to complete the work. The lack of an outsourcing justification increases the risk that financial resources will be used without adequate consideration of value.

#### **Contractor Selection**

Departments are required to ensure that adequate management controls are in place to protect the integrity of the bidding process. They must have the ability to demonstrate that all bid materials are received on time and in the manner prescribed in the solicitation documents.

During the fiscal year 2004-2005, a review of contracts was undertaken by CFMS and an analysis of results was prepared. The report noted that of 231<sup>7</sup> contracts were reviewed. Of these, 153 contracts were under \$10,000, 64 contracts were between \$10,000 and \$24,999 and 14 contracts were in excess of \$25,000. The report noted that 94% of the contracts issued were non-competitive and 6% were competitive.

During the audit a separate review of files was done. The audit noted that none of the competitive files reviewed contained a Record of Bidders. In 67% of the competitive files reviewed there were no Selection Criteria on file. In 78% of the competitive files reviewed there were no Evaluation Criteria on file.

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<sup>7</sup> CFSI Contract Report for Fiscal Year 2004-2005

In 34% of the non-competitive files reviewed there was no proposal from the contractor on file. The absence of these documents compromises CFSI ability to demonstrate that its contracting practices enhance access, competition and fairness and results in best value.

### **Sole-Source Justification**

Contracting policy and regulations require bids to be solicited before entering into a contract. However, they provide exceptions since it is not always practical or cost effective to seek bids for every contract. When an exception is used there should be documentation on file of the justification for using the exception. In 69% of the files reviewed there was no justification on file for entering into a sole-source contract. The failure to justify sole-source contracts increases the risk that the competitive process is being bypassed with a negative impact on value.

Contracting policy and procedures require that the best price be obtained for any contract including sole-source contracts. There should be documentation on file that management has determined the prevailing rate for the services of similarly qualified individuals and that information was used in negotiating the rate included in the contract. None of the files reviewed contained evidence that CFSI management had ascertained the reasonableness of the rates proposed. Increased diligence in price negotiations could result in better value for money.

### **Contract Amendments**

Contracting policy and procedures require that contracts not be amended unless such amendments are in the best interest of the government and that there be documentation on file of the justification for the amendment and an internal estimate of the time and cost to carry out the contract amendment.

In 50% of the files reviewed there was no evidence of the justification for the contract amendment on file. In 91% of the files reviewed there was no evidence on file that an internal estimate of the time and cost to carry out the contract amendment had been done. Without justifications for an amendment and evidence that an internal estimate of the time and cost for the amendment on file, there is no assurance that the amendments were issued in the best interest of the government and with due regard for economy.

### **Contract Splitting**

Contract policy and procedures do not allow contract splitting in order to avoid obtaining either the approval required by statute, the Treasury Board Contracts Directive or appropriate management approval within the department. The audit revealed that in some instances there was an appearance of contract splitting (in CFSD).

## **Employer-Employee Relationships**

The Treasury Board Contracting Policy states that contracting authorities are to ensure that an employer-employee relationship does not exist from a contract for services and requires that appropriate safeguards be included in contracting procedures to avoid such relationships. Departmental policy requires that contracting managers, when engaging the services of an individual, use a Canada Revenue Agency publication “Employee or Self-Employed?” to determine whether an employer-employee relationship exists.

None of the files reviewed for contracting with an individual contained a completed “Employee or Self-Employed?” questionnaire. When steps are not taken to mitigate the possibility of individuals being engaged under contract where an employer/employee relationship exists, the department is at risk of having to cover benefit costs and to undertake other related responsibilities of an employer.

## **Performance Evaluation**

Contracting policy and procedures require the contracting authority, at the completion of the contract, to evaluate the work performed by the contractor. The evaluation should be provided to the contractor who would be allowed to respond to the evaluation.

None of the files reviewed contained evidence that a performance evaluation had been prepared. Performance evaluations are a tool for determining whether the contractor has provided the “*best value*” for work performed. They are particularly important when the performance has not been satisfactory, but can be valuable in all cases by providing an analysis of the cost of the work and the quality of the work performed.

## **Deliverables**

Evidence that deliverables have been received in accordance with the terms of the contract is necessary in order to provide account verification under section 34 of the Financial Administration Act. In 92% of the files reviewed there was no evidence that the deliverables had been received on time and in accordance with the terms and conditions of the contract. The absence of such evidence increases the risk that the deliverables were not received in accordance with the terms of the contract and that value for money may not have been received.

## **Documentation**

Contracting policy and procedures require procurement files to be established and structured to facilitate management oversight with a complete audit trail that contains contracting details related to relevant communications and decisions including the identification of involved officials and contracting approval authorities.

There have been references in this section to numerous types of documentation that were missing from the files reviewed. Two other management tools that are required to be completed for each contract and placed on file are the Managerial Checklist for Services and the Procurement Reporting Checklist.

In 76% of the files reviewed there was no Managerial Checklist for Services.

In 62% of the files reviewed there was no Procurement Reporting Checklist.

The following table depicts in summary format consolidated findings based on a review of various contract files.

### Documentation Findings

Not on File	Item
86%	Outsourcing Justification
100%	Record of Bidders (Competitive)
67%	Selection Criteria (Competitive)
78%	Evaluation Criteria (Competitive)
34%	Proposal from Contractor (Non-Competitive)
69%	Sole-Source Justification
100%	Evidence that Rates Charged are Reasonable
50%	Contract Amendment Justification
91%	Internal Estimate of Time and Cost to Carry out Amendment
100%	Employee or Self-Employed Questionnaire
100%	Performance Evaluation
92%	Evidence of Deliverables
76%	Managerial Checklist for Services
62%	Procurement Reporting Checklist

## **Recommendations:**

### **CFSI should:**

- 7.1.1 in consultation with SPPG, design a program of quality monitoring which should address key contract management activities to ensure compliance with departmental and central agency requirements;**
- 7.1.2 implement the program and provide quarterly reports on monitoring activities to SPPG and the DCRB;**
- 7.1.3 in consultation with SPPG (given the magnitude of contracting activity), identify the required number of contract management resources at senior levels needed within CFSI to fulfil its mandate; and**
- 7.1.4 request that HAM conduct a review of situations to ensure that contract splitting is not occurring where multiple contracts have been issued to single contractors.**

### **Management Response and Time Frame**

- 7.1.1 The fundamental platform of fair, open and transparent contracting practices remains unchanged and is based on a strengthened procurement community , which will, as a shared service, manage and monitor all procurement activities in line with the broader government procurement reform agenda.**

**Quality monitoring of all contracts processed for the branch, including those of the Institute is done in the AMA by a professional PG. The quality monitoring function is now integrated in the AMA for all contracts to ensure compliance to contracting policies and procedures. Information and advice is provided to all fund centre managers accordingly. A close working relationship has been established between HAM and SPPG to discuss and resolve issues on a case by case basis.**

**Time Frame: September 2006**

- 7.1.2 Introduction of the new contract management control framework will promote a more proactive client interface leading to improved strategic procurement practices, consistent management of the contracting process, and enhanced support to the DCRB and senior management in the development of new policies and practices required to address irregularities, gaps in capacity, and align with the overall government procurement reform In order to prevent situations similar to the ones**



mentioned in the report, the Centre of Expertise, will now manage the administrative elements of the procurement process relating to all non-IT and non-Real Property service contracts over 25K for those in Canada and 84K for Missions. It will also continue its role as lead for corporate contracting policy and act as Secretariat to the Departmental Contract Review Board.

Effective January 2006, HAM has completed the IMS integration of all contracts, including those below \$5000, therefore exceeding the departmental requirement. Reports are now generated from the financial departmental system. Reports are reviewed once a month by the AMA Director. A quarterly report will be presented to HCM Management Committee.

**Time Frame: Implemented and reporting underway**

- 7.1.3 In September 2005, HCM has centralized all contracting activities in the branch AMA. At this point, one professional PG is overseeing all contracts for the branch to ensure due diligence and value for money. It is planned that another contracting professional would be joining the Institute in the near future to assist with RFPs. Authority to sign has also been revised to limit the number of employees with the financial delegation to sign for contracts.**

**Time Frame: Implemented**

- 7.1.4 The branch AMA (HAM PG) will review and approve all contracts to ensure that there is no contract splitting. Advice and alternative solutions are provided to fund centre managers to avoid situations that could lead to contract splitting. The oversight of all contracts in the same area reduces the risk of non-compliance.**

**Time Frame: Underway**

## 7.2 Confirming Orders

In reviewing the circumstances surrounding the use of the Confirming Order to pay FLIO for services provided following the expiration of the contract, the audit team focussed on the documentation of procedures for Confirming Orders, processes followed in issuing the Confirming Order, departmental use of Confirming Orders, the contracting relationship with PWGSC, and communications within DFAIT including those with USS.

### Documentation of Procedures for Confirming Orders

PWGSC provides guidance on the use of Confirming Orders in its Supply Manual, posted on the PWGSC website<sup>8</sup>. It states that it is not in the business of placing contracts to confirm the actions of client departments and that the practice of providing such services to client departments should be discouraged to the maximum extent practicable. However, it acknowledges *“that in some instances it may be necessary for PWGSC to become involved”* and that PWGSC *“may have some value to add in processing Confirming Orders where the work is complete...”*. PWGSC does note that *“where the request is the result of attempts to circumvent normal procurement procedures, return of the request to the client department should be a prime consideration.”*

A Confirming Order is a payment mechanism, used in limited circumstances, to pay for services provided and where a financial obligation exists. It is not a mechanism to initiate a contract. In lay terms, it is not a sole-source contract. (In the case of FLIO, a prior contract existed, but had ended.)

The DFAIT policy on Confirming Orders was issued once via a broadcast e-mail in January 2005 and at the time of the audit was not posted to the Intranet, the primary communications tool of the department. The broadcast e-mail refers to *“sanctions in the personnel policies of the Government of Canada against individuals who have ignored the contracting policy.”*

The DFAIT broadcast e-mail on Confirming Orders does not provide any procedures to assist staff or managers in administering service contracts or in communicating with Fund Centre managers who have contracting responsibilities where Confirming Orders are under consideration. The lack of documented contracting procedures exposes DFAIT to the risk of being non-compliant with Treasury Board policy. Without appropriate guidance, contract payments could be incorrectly or inconsistently prepared as a result of incorrect working assumptions; in this instance, as exemplified by the events surrounding the Confirming Order prepared in payment of the FLIO.

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<sup>8</sup> [www.pwgsc.gc.ca/acquisitions/text/sm/chapter07-e.html](http://www.pwgsc.gc.ca/acquisitions/text/sm/chapter07-e.html)

## Contracting Relationship with PWGSC

When the FLIO contract was renewed on May 26, 2004, PWGSC advised that: “ *The Request for Proposal document is near completion. With the current version it is reasonable to expect that no further delays will be encountered and that the following procurement schedule is achievable.*” The accepted RFP completion deadline according to PWGSC documents was August 2004. It was not until February 28, 2005 that DFAIT received official notification that the ongoing FLIO contract would not be renewed on May 30, 2005.

Without having another RFP in place at that time upon which a contract could be issued, the department was at risk of having to cease all ongoing language training, a significant interruption in a critical departmental activity. Ultimately, the Confirming Order was intended to pay for those services which had been provided on an uninterrupted basis at a period in time when the contract had effectively ended. The need for a Confirming Order for FLIO was \*\*\*a weakness in the management of the contract.

An e-mail dated April 28, 2003 from PWGSC states “*PWGSC is ultimately responsible for this procurement as they are the procurement authority....DFAIT is the technical authority...*”. During interviews at PWGSC the audit team confirmed that an option to utilize a Confirming Order through PWGSC could have been pursued. PWGSC would have required that DFAIT meet its requirements for that process. DFAIT authorities however, did not request that a Confirming Order through PWGSC be done. This option had also been discussed within SPPG; SPPG had been aware of problems related to the contract as early as March 1, 2005. During the period in which the Confirming Order was being prepared, reviewed by SPPG and prior to signing the Confirming Order that option from SPPG was not provided to CFSI.

Thus, PWGSC as the contract authority was not required by DFAIT to remediate a problem for which it was, in part, responsible for. Both DFAIT and PWGSC share responsibility for the breakdown in contract management. The audit has identified the need for more effective working relationships between DFAIT and PWGSC on all large dollar contracts. Had these relationships already been established, a PWGSC driven solution may have been readily available.

## Process Followed in Issuing the Confirming Order

The initiation of the Confirming Order, in the case of FLIO, originated in an e-mail of June 2, 2005 in which the procurement specialist asks CFSL to “*...please prepare a Confirming Order for the 3 months required to complete the RFP process, along with a solid justification for the requirement. I will then take it to SPPG for review.*”

The actual Confirming Order (Appendix E) included a rationale which had been, in a more expanded format, previously provided to HCM (Appendix D) and which had been approved by HCM in writing on July 20, 2005 prior to the preparation of the Confirming Order (July 21, 2005). In addition, the Confirming Order had been signed and reviewed by a member of SPPG as noted on the signature page of the order (Appendix E). SPD have advised ZIV that at the time the Confirming Order was signed, that SPPG was acting in an advisory role to review whether the form was complete and that the SPPG signature did not constitute an approval.

The sense of urgency which had in part been derived from the belief that ministerial actions were needed, ultimately contributed to decisions made in a compressed time frame, based on incomplete and inaccurate information. The involvement of, guidance offered, and communications by departmental procurement specialists involved in signing and review of the Confirming Order remains problematic.

Audit interviews and a review of documentation indicate that the preparation of the Confirming Order and the signatories were done transparently. CFSL followed departmental procedures (to the extent that they existed at that time) by using a payment mechanism widely used in the department. In preparing the Confirming Order there were no attempts to conceal events, nor to circumvent policies or procedures. The rationale to support the use of a Confirming Order (Appendix D) prepared by the Director General, CFSI provides a start date (June) and an end date (September) for the Confirming Orders as well as an amount required per month (\$250,000). However, a key component of that e-mail, that three Confirming Orders would be required, is illustrative of messaging that under the circumstances could have been conveyed with more clarity. Subsequently, on July 22, 2005 an e-mail from HCM was sent expressing serious problems with the situation (Appendix F).

### **Communications within DFAIT**

HR management were informed by May 5, 2005 of these contracting problems and if corrective action had been taken at that time may have been able to initiate either an amendment or to clarify other options available (within DFAIT or PWGSC) prior to the FLIO contract expiry date of May 30, 2005.

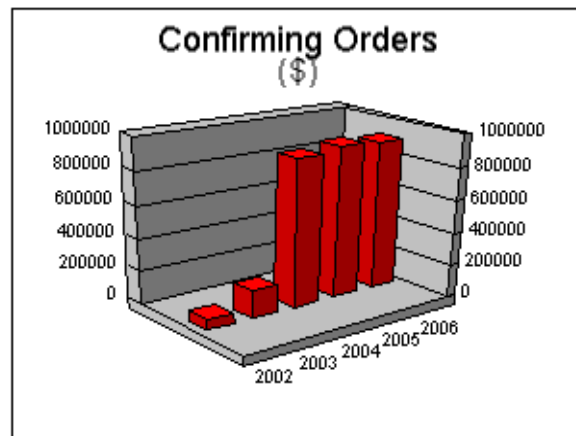
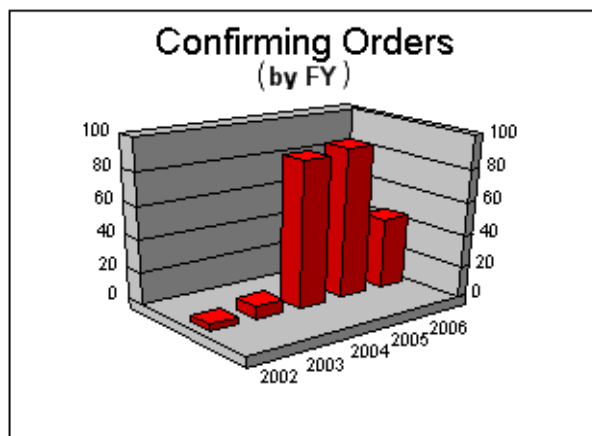
There are also records of 22 meetings involving HCM and the DG, CFSI or CFSC/SL Directors (between November 2004 and June 2005). The audit team reviewed the notes prepared during these meetings and was able to confirm four references to contracting during that period. However, the notes did not provide sufficient details of actions recommended or taken, that should be maintained on departmental business and in particular, these significant contracts.

There was a belief at DFAIT that Ministerial involvement at PWGSC was required with respect to the FLIO contract. As a result, media "Q & As" were prepared, speaking points were prepared by SPD/SPPG for USS, and a letter was sent from USS to the

Deputy Minister, PWGSC. The audit team has confirmed that there was no ministerial involvement at PWGSC.

### Departmental Use of Confirming Orders

Although Confirming Orders are not encouraged in either DFAIT or PWGSC, previous audits have noted their use as a common practice in DFAIT. For example 92 Confirming Orders were issued with a total value of \$940,000 during 2004/2005. The following charts document the volume of activity in DFAIT during the period from 2002 to 2006.



In July 2005 a request was made by the acting head of HCM that SPD bring to the DCRB's attention any other Confirming Order in the Department with a high dollar value. SPD informed the DCRB that there was only one Confirming Order of a high amount in the past 5 years and that it had been for \$100,000. It was stated that there had never been one as high as the one requested by CFSI.

However, the Audit Division was made aware of a larger Confirming Order in the amount of \$275,000 (CDN) compared to the FLIO Confirming Order (\$265,673.19). This second Confirming Order (dated August 15, 2005) had been under discussion within DFAIT well before August 2005. (The problem began in August 2004.) However, this information was not provided to the DCRB. As such, senior management did not have knowledge of this aspect of contracting operations at the time decisions were made relative to the FLIO Confirming Order.

During the period in which the Confirming Order was being discussed and continuing into the audit, SPPG and SPD provided four different interpretations as to the authorization amount allowed within DFAIT for Confirming Orders, ranging from \$25,000, \$200,000, up to but not exceeding \$600,000 and most recently \$100,000 (Appendix G).

Within CFSI, the dollar amount arrived at for the Confirming Order was a function of cash flow forecasts relative to services being provided. The inability of CFSI to obtain specific and consistent guidance from departmental procurement authorities on the appropriate dollar limits allowed, contributed to the subsequent procedural breakdown in the preparation of the Confirming Order.

**Recommendation that:**

- 7.2.1 SPD prepare procedures specific to Confirming Orders, that they be made readily available to staff, incorporated into departmental training and synchronized with those of PWGSC and TBS to ensure consistency.**

**Management Response and Time Frame**

- 7.2.1 The policy will be clarified, a reminder broadcast e-mail will be re-issued, web site updated and incorporated into training. All Confirming Orders for the branch are now reviewed by a professional PG and require the AMA Director signature. Fund centre managers are required to provide and sign the rationale required by the department. HAM is using SPPGs template when a CO is required. COs are also included in the monthly report provided to the Director and in the quarterly reports to Senior Management.**

**Time Frame: Underway**

### **7.3 Financial Controls: Section 32 (Financial Administration Act)**

Section 32 of the FAA, commonly referred to as the “Commitment Authority” requires the Minister or financial officers acting on his behalf to control commitments and ensure that funds are available within existing appropriations to discharge the financial commitment that would result from the contract. To meet obligations under Section 32, the Area Management Office (AMO) or financial support, enters the planned amount as a commitment in the department's financial system, Information Management System (IMS). This reserves the funds and decreases the free balance available for future decision making. It also prohibits the commitment of funds in excess of the free balance.

During the audit, a number of instances were noted where departmental procedures were not followed. These included commitment forms (CFs) not being located, CFs not being quantified and CFs being signed after the commencement of services. Also there was no indication that the signature on the CFs was authorizing the commitment of funds pursuant to Section 32. These types of non-compliance with departmental procedures increase the risk that commitments could be made in excess of unencumbered balances.

#### **Commitment Forms Not Available**

Commitment forms (CF) for the 2003/2004 fiscal year could not be located. As a result, the audit team was not able to complete various verification procedures to determine whether commitment activities were performed in accordance with Section 32 of the FAA.

The CFs used by CFSL are filed in the Registrar's Office for all foreign language training activities. However, some CFs were destroyed. The audit team has concluded that the destruction of the CFs filed in the Registrar's Office resulted from ineffective communication between CFSM and the Registrar's Office.

In instances where the CFs were destroyed, the audit team was not able to confirm whether (i) the charges by the contractor were for services delivered to a registered trainee, (ii) the timing of the actual training was consistent with the time frame that would have been documented on the CF or (iii) the form had been authorized by an appropriate individual with delegated signing authority.

#### **Commitment Forms Not Always Quantified**

In CFSL, the CF was generated by personnel in the Registrar's Office, forwarded to the Director for signature under Section 32 of the FAA and then forwarded on to CFSM for quantification and entry into IMS.

In performing Section 32 verification, program personnel determine if sufficient unencumbered funds exist for the potential acquisition of goods or services. To determine whether or not unencumbered funds exist it is necessary to know the dollar amount of the potential acquisition. Therefore, the quantification of the CF and entry into IMS should have been performed prior to presentation of the CF to the Director for approval pursuant to Section 32 of the FAA.

In 58% of the transactions reviewed the CFs were not quantified and entered into IMS prior to the Director performing the Section 32 verification.

By not quantifying the CF and by not determining that sufficient funds existed prior to the signature of the Director the possibility existed that training activities could have been undertaken where sufficient funds did not exist.

### **Commitment Forms Signed Following Commencement of Services**

Section 32 of the FAA states that contracts should not be entered into unless there is a sufficient unencumbered balance to discharge any debt that would be incurred. Therefore, work should not commence before a contract has been entered into and work should not commence prior to authorization pursuant to Section 32.

In 68% of the transactions reviewed services commenced prior to completion of Section 32 activities and in the case of the CFSC contractor it was noted that the total value of payments exceeded the total value of the contract which required retroactive approval from PWGSC.

When work is commenced prior to the Section 32 verification the risk is increased that services could be delivered where there were insufficient funds for ensuing payments.

### **No Indication that Signature on Commitment Form was Authorizing Commitment of Funds**

The CF requires the signature of the Director. The purpose of this signature is to authorize commitments pursuant to Section 32 of the FAA.

In 100% of the cases reviewed in CFSC and CFSL the signature boxes did not indicate that the signatures were effectively under Section 32 of the FAA.



**Recommendations:**

- 7.3.1 CFSL management should ensure that CFs are retained;**
- 7.3.2 CFSL management should ensure that CFs are quantified and entered into IMS prior to obtaining the Director's signature pursuant to Section 32 of the FAA;**
- 7.3.3 CFSC and CFSL management should ensure that the Section 32 verification has been completed prior to a contractor commencing delivery of services; and**
- 7.3.4 CFSC and CFSL management should ensure that the signature boxes on the respective CFs indicate that the signatures are pursuant to Section 32 of the FAA.**

**Management Response and Time Frame**

- 7.3.1 Agree in principle with the intent of the recommendation. A new electronic process was implemented in January 2006 which now eliminates the need for a paper-based form to provide financial information. Currently all contracting documents including financial authorizations are kept in the contracting files. However, now that IMS is directly involved when processing contracts, the AMA is currently investigating this approach further. Since January 2006 all contracts are entered in IMS including a final cost before it is presented to fund centre managers for signature. The contract is also entered into IMS for future reference. This new approach (IMS) precludes the necessity to use the commitment forms. The AMA is currently amending the contracting procedures for the HR Branch to align all divisions with the same approach.**

**Time Frame: Implemented**

- 7.3.2 Agree. There will be mandatory use of the Automated Contracting System (ACS/SAP) for all contract entries.**

**Time Frame: Implemented**

- 7.3.3 Agree. The AMA has been informing all fund centre managers and specifically CFSC and CFSL that no work is to take place before a contract is processed and entered in IMS before it is signed by both parties. Information sessions have been provided directly to the appropriate fund centre managers and staff regularly. Another internal session is planned**

**for next fall. On-going requirements are addressed by the professional PG as necessary.**

**Time Frame: Implemented and underway**

**7.3.4 We agree in principle, however as per 7.3.1 above the new process is done electronically.**

**Time Frame: Implemented**

#### **7.4 Financial Controls: Section 34 (Financial Administration Act)**

Section 34 of the FAA requires an account verification process and a certification that the services have been performed as required prior to payment. The account verification process includes checking to ensure that the contractual terms including price, quantity and quality have been met and that all departmental, central agency, legal, and regulatory requirements have been satisfied. The account verification process must provide for auditable evidence of verification.

During the audit a number of instances were found that made it difficult to confirm that the services were provided in accordance with the contracts. This included situations where the services provided could not be agreed to the contract, hospitality services were provided to non-government persons without prior approval, hourly rates were charged in excess of the contractual rates, questionable accuracy of the Monthly Attendance Reports, no signature cards for personnel approving invoices under Section 34 and no indication that approval of invoice constitutes Section 34 approval. The schedules supporting the charges under the Graybridge contract required program management to spend more time than necessary to check the mathematical accuracy when performing the Section 34 verification. These types of non-compliance with departmental procedures increase the risk that payments will be approved for services that were not received.

##### **Services Could Not be Agreed to Contract**

Services for Non-Priced Work could not be agreed to the Graybridge contract. Non-Priced Work, which is covered in the contract under section 4 of Annex B, Basis of Payment, relates to services that fall outside of the core intercultural effectiveness training services offered by the contractor, i.e., including but not limited to Account Management, Video Production/Direction and Administration.

In 65% of the transactions reviewed, the audit team was not able to reconcile the charges on the invoices with the payment schedule in the contract for both descriptions for services rendered and the per diem amounts charged.

Call-ups provided to the contractor by CFSC, which describe the Non-Priced Work to be performed also did not include the same description of services as was included in the payment schedule contained in Annex B of the contract. The billings from the contractor reflected the descriptions and per diem amounts per the call-up as opposed to the descriptions contained in the contract.

The audit team was not confident that Non-Priced Work, including the nature of the services and the amounts charged by the contractor, were in accordance with the payment schedule contained in Annex B of the contract.

## **Hospitality Services**

CFSC has the mandate to provide training to groups of government and non-government representatives. The audit team noted that Graybridge, on behalf of CFSC, provided, paid for, and billed back to CFSC group lunches offered to non-government representatives, for which the audit team did not find evidence in the program file that prior approval for hospitality had been received.

## **Hourly Rates Charged in Excess of Contractual Rates**

Hourly rates charged for performance of registrar functions were greater than the amounts allowed in the contract.

Section 34 (1) (a) (i) of the FAA states that no payment shall be made for prices charged that are not in accordance with a contract. The sample included two invoices for charges for services rendered for performance of registrar functions; however, the audit team was informed that this practice was prevalent for all charges for registrar activities. The audit team noted that the hourly rates charged on these invoices were for \$29.00 and \$27.00 per hour respectively; however, the hourly rate outlined in the contract in Annex B, Basis of Payment, was \$12.60 for a difference of \$14.40 per hour which represents a 114% increase.

CFSI management indicated that it was aware of this phenomenon and that the contract should have been updated to reflect current market rates for such services.

The audit team concluded that the amounts paid for services for performance of registrar functions were in excess of the amounts allowed pursuant to the contract and therefore, signing Section 34 authorizing these payments was not in compliance with the Financial Administration Act.

## **Questionable Accuracy of Monthly Attendance Reports**

There is no standard procedure for completion of Monthly Attendance Reports (MARs). CFSL personnel authorized payment of invoices that were supported by MARs where the audit team has questions with respect to the accuracy of the hours being charged for trainer's services.

Students and instructors complete a MAR that outlines the training time received by the student and the training time delivered by the instructor. The MAR is the key document used by the contractor to bill CFSL for services rendered by the instructor. The audit team noted that:

- In 47% of the cases reviewed, signatures or initials of the student/instructor were not present;
- In 20% of the cases reviewed, the MARs were completed in pencil;
- In 11% of the cases reviewed, alterations (erasures, white-out, write-overs) to the MAR were noted; and
- In 4% of the cases reviewed, it appeared that the MAR's were totalled after the student signed the form.

The audit team concluded that CFSL personnel who authorized payment of invoices, pursuant to Section 34 of the FAA, were not aware whether the amounts charged and paid were correct and that there is a risk that CFSL paid for services that had not been delivered. It also concluded that the lack of a standard procedure for the completion of MARs increased the risk that CFSL paid for services that had not been delivered.

### **No Signature Cards for Personnel Approving Invoices under Section 34 of the Financial Administration Act**

Approval of invoices under Section 34 of the FAA was performed by CFSL personnel for whom no signature cards existed.

The audit team noted the following:

- Payment requests were signed by an individual from CFSM (AMA equivalent) based on a signature on the invoices by program personnel. The audit team believes that Section 34 should have been exercised by program personnel that are "closer to the business", and
- Signature cards delegating Section 34 authority could not be located for two employees who effectively approved invoices under Section 34 of the FAA.

Invoices have been paid based on approval by CFSL personnel for whom signature cards delegating authority for Section 34 of the FAA did not exist. This is in contravention of the FAA.

### **No Indication that Approval of Invoice Constitutes Section 34 Approval**

Program personnel authorizing payment for invoices should indicate that the authorization is pursuant to Section 34 of the FAA.

The audit team noted signatures on invoices by program personnel and was informed that the purpose of these signatures was to approve the invoices and proceed with payment to the contractor. These signatures were effectively authorization under Section 34 of the FAA. However, there was no visible indication that the signature constituted Section 34 approval.

## **Manual Verification of Mathematical Accuracy**

Personnel from CFSC have not been requesting electronic copies of spreadsheets supporting the detailed charges in the contractor's invoices and the program personnel spend more time than necessary in performing Section 34 verification by manually verifying mathematical calculations.

The review of the invoices from the contractor revealed that many documents supporting services contain a significant number of mathematical calculations, e.g., "The Billing Summary of In-Classroom Coordination & Delivery" and "Breakdown of Extra Billings Associated With Training Delivery". These supporting documents are manually checked for their accuracy by a program officer performing Section 34 verification. If the supporting documentation were received electronically the program officer could review formulae contained in the spreadsheets rather than manually checking the calculations and would save time in conducting activities associated with performance of Section 34 activities.

**Recommendations:**

- 7.4.1 CFSC management should ensure that future billings from the contractor, with respect to Non-Priced Work, accurately reflect the description of the services contained in the payment schedule outlined in Annex B of the contract.**
- 7.4.2 CFSC management should ensure that hospitality provided to non-government representatives meets TBS requirements, has prior approval by the CFSC manager with delegated authority, and is in accordance with the department's Approval Authority and Cost Matrix.**
- 7.4.3 CFSL management should ensure that hourly rates charged are in accordance with the amounts outlined in the contract before approving a contractor's invoice under Section 34 of the Financial Administration Act.**
- 7.4.4 CFSL management should create a procedure for the completion of MARs, which include, but is not limited to: Original signatures of trainers and trainees are present on all MARs, MARs are completed in ink, there are no alterations to the MARs. In instances where alterations are necessary, the MARs are to be approved by the appropriate CFSL Program Manager, all MARs are to be totalled prior to the trainee signing the form, and on a sample basis, confirmation should be requested from trainees regarding the number of hours of training received.**
- 7.4.5 CFSL management should reject billings in instances where MARs have not been compiled in accordance with CFSL's policy/procedure.**
- 7.4.6 CFSL management should ensure that signature cards for all personnel with delegated signing authority are completed annually.**
- 7.4.7 CFSC and CFSL management should ensure that it is clear that signatures on invoices are authorization under Section 34 of the FAA (i.e. use a stamp).**
- 7.4.8 CFSC management should request that the contractor provide electronic copies of the documents supporting "The Billing Summary of In-Classroom Coordination & Delivery" and "Breakdown of Extra Billings Associated With Training Delivery" associated with the invoice.**

## **Management Response and Time Frame**

**7.4.1 Agree. Corporate Finance is reviewing and updating procedures to strengthen control framework. The clause for Non-Priced Work is used to deal with unforeseen activities related to the delivery of the program. The use of this clause should be defined further in the next RFP to provide for an enhanced control on the use of this option. Discussions will be held with SPD (PWGSC) to establish mechanisms within that clause to ensure proper control and value for money.**

**Time Frame: Underway**

**7.4.2 Agree. All branch requests for hospitality are aligned with the revised departmental policy. The AMA is currently investigating the use of hospitality as a vehicle to provide luncheons during training sessions by the Institute. Options have been drafted for discussion and a meeting will be held with departmental representative from SMD on this subject. This will be discussed further at our next meeting with CFSC.**

**Time Frame: Underway**

**7.4.3 All branch fund centre managers have been informed to ensure that services/goods have been provided before signing Section 34 of the FAA. As stated above, financial delegation for the Institute has been further limited to key employees.**

**Time Frame: Underway**

**7.4.4 A meeting will be held with CFSL managers to discuss this issue further, address this report recommendation and identify solutions.**

**Time Frame: Underway**

**7.4.5 As above.**

**7.4.6 Financial delegation to sign S.32 and S.34 of the FAA has been revised for the Institute. The AMA ensures that signature cards correspond to the delegated signing authority.**

**Time Frame: Underway**

**7.4.7 As above**

**Time Frame: Underway**



**7.4.8 This is a standard practice for the AMA and is now being applied to the Institute since CFSM joined HAM last fall (2005). All invoices entered in IMS by the financial assistants in HAM are reviewed and stamped.**

**Time Frame: Underway**

## 7.5 Monitoring and Reporting of Procurement Practices

The audit team learned that no process exists for departmental monitoring and reporting of contracts issued by PWGSC on behalf of the department. The contracts entered into by PWGSC on behalf of the department need to be reviewed, approved and monitored by the DCRB.

It has been reported previously that the department needs to review its procurement processes and benchmark them against Government of Canada (GoC) Best Practices. The Review of IT Professional Services Procurement Modernization (2002) noted that *“There is room for improvement through the recognition that procurement should become part of all project planning activities, monitored and reported, just like other project deliverables. Again, DFAIT would benefit from a formal review of best practices available – internal to DFAIT, from other GoC departments, and from private entities, assessing where these best practices could be ported to the department.”*

In a related comment, the Audit of Contracting (2004) noted that *“the management of service contracts continues to operate without a dedicated information system....it is not possible to determine with precision the volume of contracting activity.”*

In Section 7.1 it is recommended that CFSI, in consultation with SPPG, design a program of quality monitoring which should address key contract management activities to ensure compliance with departmental and central agency requirements. Although department-wide contracting was not part of the scope of this audit, it would be inconsistent if this recommendation was not applied on a department-wide basis.

The following recommendation is therefore provided in consideration of a broader application, beyond CFSI, throughout the department.

### Recommendation:

**7.5.1 The DCRB should review and approve contracts entered into by PWGSC on behalf of the department, including all options to renew (if applicable) and amendments.**

## **Management Response and Time Frame**

**7.5.1 The department implemented reporting of departmental contracts over \$5000 into an automated system in December 2005. This will now include contracts initiated by the department through PWGSC as it will link to financial reporting systems. A Centre of Expertise will control the contracting process for all contracts and related documentation for contracts over \$25,000. The Centre of Expertise is the single window to PWGSC. Revision of the Terms of Reference for the Departmental Contract Review Board (DCRB) and CRBs in order to provide greater decision authority and assume a broader management role, reporting to the Management Committee on a semi-annual basis on policy requirements, irregularities and performance.**

**Formal monitoring mechanisms will be discussed further at our meeting with SPPG. Currently, a number of meetings have been held with SPPG to discuss branch requirements (between PGs). Monitoring and reporting will be strengthened to ensure that all contracting activities fall within Treasury Board and Trade Agreement requirements. A monthly non-compliance report will be issued to ADMs and the DCRB.**

**Time Frame: Underway**

## FLIO Chronology

In November 1998, as a result of a competitive RFP process, PWGSC awarded on behalf of the Centre for Language Training (CFSL) a \$4,800,000 contract to FLIO to deliver foreign language training and testing services in 50 languages, from November 13, 1998 to November 30, 2001. The terms and conditions included the option to extend the Contract by two one-year periods. This option was exercised with an extension from December 1, 2001 to November 30, 2002, which also increased the contact value by \$1,600,000 and again on December 1, 2002 to November 30, 2003, which increased the contract value by \$1,500,000.

On February 7, 2003 CFSL received an e-mail from PWGSC advising that the FLIO contract would expire on November 30, 2003 and that a new RFP was required. Based upon the time frame of the 1998 RFP process it was anticipated that the new contracting process could be completed by August/September 2003. In April 2003 CFSL submitted a copy of their RFP to PWGSC for review. It required, however, extensive changes to conform to new contracting regulations. On December 9, 2003, PWGSC indicated to CFSL that feedback from the division manager was positive and that they were close to having the RFP ready for approval. On January 16, 2004, PWGSC advised CFSL that the target posting date to MERX for the RFP was February 12, 2004. At a meeting on January 20, 2004 PWGSC indicated that further contract extension and funding approval for the current foreign language training contract was required, depending on the posting date of the RFP. On May 4, 2004, PWGSC proceeded to obtain the amendment approval, citing *"with the current version it is reasonable to expect that no further delays will be encountered and that the following procurement schedule is achievable: a) RFP posted on MERX June 2004, with a closing date in early August 2004; b) completion of evaluation and award of resulting contract by end of August 2004"*. On April 22, 2004, just prior to the contract amendment being sought, a new procurement officer and a division manager were assigned to the RFP. On June 9, 2004, after the amendment approval was obtained, CFSL was instructed to re-write the RFP. Excessive delays in negotiating the new statement of work and mandatory requirements, frequent rewrites of the RFP document, and lack of resources within PWGSC, delayed the posting of the RFP to MERX until May 2005. On February 25, 2005, CFSL was advised by PWGSC that the pre-approved amount remaining in the FLIO contract, obtained back in May 2004, could only extend the contract until May 31, 2005. On February 28, 2005, CFSL asked PWGSC whether or not Foreign Language Training must cease on May 31, 2005 until the RFP was completed. PWGSC advised CFSL to seek assistance from their internal procurement unit, as the last amendment was approved by the PWGSC Minister and cited "no further extension". After obtaining and reviewing a copy of PWGSC's Amendment Approval Form, the audit team determined that the statement made by PWGSC, in the February 25, 2005 e-mail, with respect to the involvement of their Minister, was inaccurate. The total FLIO contract and amendments were valued at \$10,300,000 and the last extension was approved at the ADM level, which cited *"with*

the current version it is reasonable to expect that no further delays will be encountered....”; however, the contract expired on May 31, 2005. This situation meant that the department was left with a financial obligation to pay for services provided after May 31, 2005. The mechanism initially sought by CFSL, a Confirming Order, is a payment mechanism; a detailed explanation is provided in Section 7.2 of this report. A TB submission recommended by SPPG/SPD was also not used by DFAIT to ratify FLIO’s contract. Instead, a \$1,500,000 sole sourced contract, which included built in retroactivity to cover the services from June 1, 2005 to October 5, 2005 was let by PWGSC on October 5, 2005, in accordance with Treasury Board instructions.

Below is a graphical presentation of the initial contract, with options and amendments:

Legend:

Initial Contract
RFP Process
Amendments

	1998	1999	2000	2001	2002	2003	2004	2005
<b>Initial contract</b>	13-Nov-98			30-Nov-01				
<b>Option 1</b>				01-Dec-01	30-Nov-02			
<b>Option 2</b>					01-Dec-02	30-Nov-03		
<b>RFP Process</b>						07-Feb-03		Sept. Cont..../
<b>Amendment 1</b>						28-Nov-03	30-Apr-04	
<b>Amendment 2</b>							April 30-May 30	
<b>Amendment 3</b>							May 28 - Aug 31	
<b>Amendment 4</b>							Aug 30 - Dec 31	
<b>Amendment 5</b>							20-Dec-05	28-Feb-05
<b>Amendment 6</b>								Feb 28 - May 31

	Contract Period	Initial Amount	Increase Amount	Accumulative Balance
<b>Initial Contract</b>	11/13/98 To 11/30/01	4,815,000.00		
<b>Option 1</b>	12/01/01 To 11/30/02		1,605,000.00	6,420,000.00
<b>Option 2</b>	12/01/02 To 11/30/03		1,500,000.00	7,920,000.00
<b>Amendment 1</b>	11/28/03 To 04/30/04		697,640.00	8,617,640.00
<b>Amendment 2</b>	04/30/04 To 05/30/04		52,463.00	8,670,103.00
<b>Amendment 3</b>	05/28/04 To 08/31/04		639,299.38	9,309,402.38
<b>Amendment 4</b>	08/30/04 To 12/31/04		450,000.00	9,759,402.38
<b>Amendment 5</b>	12/20/04 To 02/28/05		0.00	9,759,402.38
<b>Amendment 6</b>	02/28/05 To 05/31/05		504,897.00	10,264,299.38
<b>Total</b>		<b>4,815,000.00</b>	<b>5,449,299.38</b>	<b>10,264,299.38</b>

## APPENDIX B

### Graybridge

In 1996, CFSC was formed when the Centre for Intercultural Training was transferred from CIDA to CFSI. As part of the transfer CFSC inherited the supplier arrangements formerly in place at CIDA. This was a fragmented, administratively burdensome and costly supplier arrangement. Within the first year of operations it was obvious that this system was misaligned with the Centre's strategic directions. In 1997, CFSC commenced the planning process for a procurement designed to realize the goal of providing one-stop service. The resulting procurement strategy called for the solicitation of a single supplier.

The NAFTA level procurement resulted in two bids. One bid was compliant, that of Graybridge International Consulting and after significant negotiations CFSC awarded a \$11,205,000 contract to Graybridge to deliver intercultural effectiveness training from October 1, 1999 to September 30, 2002. The terms and conditions included the option to extend the contract by two one-year periods. This option was exercised with an extension from October 1, 2002 to September 30, 2003, which also increased the contract value by \$6,000,000 and again on October 1, 2003 to September 30, 2004, with no increase to the contract value.

A graphical presentation of the original contract, with options and amendments, is provided below:

Legend:

Initial Contract	
RFP	
Amendments	

	1999	2000	2001	2002	2003	2004	2005
Initial Contract	01-Oct-99			30-Sep-02			
Option 1				01-Oct-02	30-Sep-03		
Option 2					01-Oct-03	30-Sep-04	
Amendment 1					29-Sep-03		
RFP					20-Nov-03		
Amendment 2						Oct 1 To Dec 31	
Amendment 3							Jan 1 To Jun 30
Amendment 4							Jun-15
Amendment 5							Jul 1 To Sep 30
Amendment 6							Oct 1 To Nov 30

	<b>Contract Period</b>	<b>Initial Amount</b>	<b>Increase Amount</b>	<b>Accumulative Balance</b>
<b>Initial Contract</b>	10/01/99 To 09/30/02	11,250,000.00		
<b>Option 1</b>	10/01/02 To 09/30/03		6,000,000.00	17,250,000.00
<b>Option 2</b>	10/01/03 To 09/30/04		0.00	17,250,000.00
<b>Amendment 1</b>	29-Sep-03		0.00	17,250,000.00
<b>Amendment 2</b>	10/01/04 To 12/31/04		0.00	17,250,000.00
<b>Amendment 3</b>	01/01/05 To 06/30/05		476,000.00	17,726,000.00
<b>Amendment 4</b>	15-Jun-05		1,024,000.00	18,750,000.00
<b>Amendment 5</b>	07/01/05 To 09/30/05		750,000.00	19,500,000.00
<b>Amendment 6</b>	10/01/05 To 11/30/05		0.00	19,500,000.00

**11,250,000.00      8,250,000.00      19,500,000.00**

On November 20, 2003, CFSC advised PWGSC that they were starting to map out their requirement for the next procurement process. Based upon the timeframe required in the earlier RFP process it was anticipated that the new contracting process could be completed by October 1, 2004. Frequent delays on the part of PWGSC in reviewing CFSC's RFP content, rejection of CFSC's business plan in March 2004 to extend the Graybridge contract to March 31, 2006 pending a MOU agreement with CIDA, led to a long and complicated RFP process. In the interim, the Graybridge contract was amended six times by PWGSC. An internal RFP was prepared by SPPG to bridge the gap until PWGSC posted the IET multi-year RFP.

Our interviews and review of documentation identified that on several occasions the Director, CFSC communicated concerns to PWGSC with respect to the lengthy IET RFP process and had briefed the DG, CFSI. Beginning on September 16, 2004 CFSC requested confirmation from PWGSC that either the RFP be completed in time for a contract award on or before December 31, 2004, or that PWGSC further extend the contract. PWGSC assured CFSC that if they were unable to meet the target date, they could extend the Graybridge contract to ensure no interruption of services. In June 2005, PWGSC was considering an extension to the Graybridge contract to March 31, 2006, to facilitate negotiations with CIDA. In late June, PWGSC informed CFSC that they were not extending the current contract to 2006.

In the summer of 2005 an internal RFP was prepared by SPPG, in collaboration with CFSC to bridge the gap until PWGSC awarded a multi-year RFP. The audit team was advised that this initiative was raised in a meeting held with PWGSC, DFAIT and TBS senior officials. These discussions, held in mid-August 2005, were undertaken to ensure continuity of services within CFSC. The internal bridging RFP was posted by SPPG to MERX on August 17, 2005 and subsequently pulled off MERX the following day by the Director, SPPG. In the interim, a final extension was negotiated with PWGSC to extend the Graybridge contract to November 30, 2005. On October 18, 2005 the internal RFP was again posted on MERX, however, the additional two month gap created by the removal of the RFP from MERX (August 18 to October 18, 2005)

contributed to a tight time line in which CFSC was to award a bridging contract before the November 30, contract expiry date.



**La Cité Chronology**

On October 15, 2002, Ecole de langues La Cité was awarded a one month traditional bid contract by DFAIT, valued at \$83,000, pending the outcome of an RFP posted to MERX on November 1, 2002, with a closing date of December 13, 2002.

On December 20, 2002 DFAIT awarded, on behalf of the Center for Language Training a \$1,070,000 contract to Ecole de langues La Cité to provide official language training services from December 24, 2002 to August 30, 2004. The terms and conditions of the contract included the option to extend the contract by 3 one-year periods. This option was exercised with an extension from September 1, 2004 to August 30, 2005, which also increased the contract value by \$1,070,000. The contract was amended two times, once to increase the value to \$2,700,000, and the second to extend the period to September 30, 2005.

On September 9, 2005 Ecole de langues La Cité was awarded another contract by the DCRB, from October 1, 2005 to September 30, 2006, valued at \$2,000,000.

A graphical presentation of the original contract, with options and amendments, is provided below:

Legend:

RFP
Contract
Amendments

	2002	2003	2004	2005	2006
RFP Tbid DFAIT	09/23/2002 To 10/15/2002				
Initial Contract	10/15/2002 To 11/22/2002				
RFP MERX DFAIT	11/01/2002 TO 12/13/2002				
Amendment 1	11/22/2002 To 12/24/2002				
Amendment 2	12/06/2002 To 12/24/2002				
New Contract	12/24/2002		08/30/2004		
Option 1			09/01/2004	08/30/2005	
Amendment 1			12/10/2004	To 08/30/2005	
RFP MERX DFAIT				N/A	
Amendment 2				08/30/2005 To 09/30/2005	
New Contract				10/01/2005	09/30/2006
RFP PWGSC				N/A	

	<b>Contract Period</b>	<b>Initial Amount</b>	<b>Increase Amount</b>	<b>Accumulative Balance</b>
<b>Initial Contract</b>	10/15/2002 To 11/22/2002	83,207.48		
<b>Amendment 1</b>	11/22/2002 To 12/24/2002		65,351.32	148,558.80
<b>Amendment 2</b>	12/06/2002 To 12/24/2002		5,917.53	154,476.33
<b>New Contract</b>	12/24/2002 To 08/30/2004	1,070,000.00		1,224,476.33
<b>Option 1</b>	09/01/2004 To 08/30/2005		1,070,000.00	2,294,476.33
<b>Amendment 1</b>	12/10/2004 To 08/30/2005		560,000.00	2,854,476.33
<b>Amendment 2</b>	08/30/2005 To 09/30/2005		0.00	2,854,476.33
<b>New Contract</b>	10/01/2005 To 09/30/2006	2000000		4,854,476.33

**Total    3,153,207.48    1,701,268.85    4,854,476.33**

## Approval by HCM of Confirming Order

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**From:** -HCM  
**Sent:** July 20, 2005 3:05 PM  
**To:** -CFSI  
**Cc:** -DMA; -CFSL; -CFSM; -CFSM  
**Subject:** RE: Justification pour un ordre de confirmation

Je suis d'accord avec ta proposition.

---

**From:** -CFSI  
**Sent:** 20 juillet 2005 10:27  
**To:** -HCM  
**Cc:** -DMA; -CFSL; -CFSM; -CFSM  
**Subject:** Justification pour un ordre de confirmation

Bonjour

Je t'avais parlé il y a quelque temps de la situation du contrat pour la livraison de nos cours en langues étrangères. Le but de ce courriel est de te demander l'autorisation de signer un ordre de confirmation pour pouvoir continuer à livrer le service en attendant qu'un nouveau contrat soit approuvé. Je te donne un peu de contexte.

En novembre 1998, FLIO inc a obtenu un contrat pour livrer l'enseignement et l'évaluation de langues étrangères. Ce contrat, amendé et prolongé plusieurs fois, a expiré le 31 mai 2005 même si un " Request for Proposal " pour renouveler ce contrat avait été posté sur MERX par travaux publics. Trois propositions ont été obtenues par CFSL à la fin de juin 2005 et sont en train d'être revues par un comité d'évaluation. Dès que ce processus est approuvé par travaux publics un nouveau contrat multi-annuel sera octroyé ( nous le souhaitons vers septembre ).

Ce retard malencontreux est le résultat d'une combinaison de facteurs tels l'augmentation de formation requise, la complexité de ce contrat qui a causé la nécessité de longues négociations entre CFSL et TPC, des changements de personnel qui traitaient ce dossier etc.

Comme la formation linguistique ne peut être interrompue à ce moment critique de la période pré-affectation, nous sommes en train de fournir ce service sans contrat valide. Les solutions pour le paiement des factures sont limitées et devons y faire face de façon urgente. Pour la période débutant le 1er juin, un ordre de confirmation pourrait être considéré pour autoriser les paiements des factures qui se situent à approximativement 250K par mois. Bien que cette méthode soit réprouvée par SPPG à cause des montants impliqués, il faut que cette option soit considérée par la haute gestion pour une question de célérité.

L'alternative serait de présenter une soumission au conseil du trésor pour approbation. Cette option demandera l'élaboration d'une complète justification avec un processus qui risque d'être lent et avec une décision prise par d'autres entités. Nous risquons également que ces délais nous mettent dans une position où la compagnie pourrait nous demander dommages et intérêts si la situation de non-paiement se prolonge. Le paiement pour juin est maintenant dû et j'ai besoin de l'approbation de la haute gestion ( toi ou , que je me suis permis de copier comme présidente du conseil en langues étrangères ) pour résoudre cette situation qui dépasse l'autorité de signature d'un DG.

D'autres cas similaires sont en arrière plan ( OLT et le contrat pour CFSC ) mais nous sommes en train de les résoudre pour ne pas se retrouver dans la même situation que le " FLT ".

Merci de ta collaboration

Confirming Order

PWGSC Contract Number : 08349-8-0021/001/ZF

**CONFIRMING ORDER**

THIS CONFIRMING ORDER made in duplicate on this 21<sup>st</sup> day of July 2005.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA (hereinafter referred to as "Her Majesty") acting through and represented by the Minister of Foreign Affairs (hereinafter referred to as "the Minister")

**OF THE FIRST PART**

AND:

FLIO Inc  
750-130 Slater St.  
Ottawa, Ontario  
K1P 6E2

(hereinafter referred to as "the Contractor")

**OF THE SECOND PART**

WHEREAS Her Majesty requested services from the Contractor from June 1<sup>st</sup> to June 30<sup>th</sup>, 2005.

NOW THEREFORE, the parties wish to formally confirm by means of this Confirming Order that Her Majesty shall pay to the Contractor the sum of **two hundred and sixty-five thousand six hundred seventy-three dollars and nineteen cents (\$265,673.19)** plus applicable GST in consideration of the Contractor's performance of the work for the Minister (hereinafter referred to as the "Work").

The Contractor hereby agrees that in consideration of such payment by Her Majesty to the Contractor, Her Majesty shall be released and forever discharged from all manner of actions, claims, suits and demands which may arise as a result of Her use of the subject Work.

GST, to the extent applicable, will be incorporated into all invoices and progress claims for goods supplied or work performed and will be paid by Canada. The Contractor agrees to remit any GST paid or due to Revenue Canada.

This Confirming Order has been executed on behalf of Her Majesty the Queen in right of Canada by duly authorized representatives of the Minister of Foreign Affairs and on behalf of the Contractor by its duly authorized signing officer.

MINISTER FOR FOREIGN AFFAIRS

Per: \_\_\_\_\_

CFSI

Certified funds are available under Section 32  
of the Financial Administration Act

Per: \_\_\_\_\_

CFSL

Reviewed by:

Per: \_\_\_\_\_

Contracting Services (SPPG)

Justification for a Confirming Order

In November 1998, FLIO Inc was awarded a contract to deliver foreign language training and testing services. The contract, amended several times, expired on May 31, 2005. Since early 2003, the Centre for Language Training has been working with PWGSC to arrange a new contract through a competitive RFP process to provide training and testing services. It was initially anticipated that the work would be completed by August 31, 2003 but the \_\_\_\_\_ has resulted in an excessive delays. A \_\_\_\_\_ and \_\_\_\_\_ were assigned to the file and requested a complete re-working of the Statement of Work and the Evaluation Criteria. The process was finally completed and an RFP posted on the MERX system with an expiry date of June 21, 2005. With the former contract expired from May 31, 2005, there has been not capacity to launch a competitive process to bridge services from May 31 to new contract award (anticipated for mid to late July). This confirming order is sought to continue language training and testing services pending the award of a new contract.

## APPENDIX F

**From:** -HCM  
**Sent:** July 22, 2005 3:00 PM  
**To:** -CNE -CFSI  
**Cc:** -DMA; -CFSL; -NAM; -HAM  
**Subject:** RE: Justification pour un ordre de confirmation

Etant donné la récente discussion avec , et , j'ai de sérieux problèmes (comme toi d'ailleurs...) avec toute cette situation.

J'ai demandé à en tant que président du comité ministérielle sur les contrats de me recommander des mesures à prendre pour a) corriger la situation et b) pour que ce genre de situations ne se reproduise plus

**Schedule 3 - Service Contracts  
(\$000's) (Excluding Architectural and Engineering Services)**

Item	Col I	Col II	Col III	Col IV	Col V	Col VI	Col VII
	Contracting Authority For	Electronic Bidding		Competitive		Non-Competitive	
		Entry	Amendments	Entry	Amendments	Entry	Amendments
1.	All Programs not specifically named herein	2,000	1,000	400	200 *	100 *	50
2.	The Office of the Commissioner of Official Languages	2,000	1,000	400	200	100	100
3.	Public Works and Government Services Canada	20,000	10,000	10,000	5,000	3,000	1,500
4.	Transport	4,000	2,000	2,000	1,000	100	100
5.	Fisheries and Oceans	4,000	2,000	400	200	100	50

Sent: Tuesday, October 19, 2004 10:45 AM  
To: [redacted] @international.gc.ca; [redacted] @international.gc.ca  
Subject: RE: RFP to replace Contract 08349-8-0001/001/ZF

So ...

Just wondering where we are?

19  
\*\*\*\*\*  
Message sent Thu 16/09/2004 11:55 AM

Further to the e-mail below sent by [redacted], I did some calculations and share them with you. In light of this, I am seeking some form of reassurance from PWGSC that either the RFP will be completed in time for a contract award on or before December 31, 2004 or that PWGSC will further extend the current contract for at least an additional 6 month period. I am requesting this length of extension because the award of a contract and the requisite transition (given the breadth of this services provided) at fiscal year end would be unmanageable and detrimental to the Centre's capacity to service clients appropriately.

This all being said, and in light of the delays experienced to date, I am left wondering why we do not simply seek amendment of the contract until March 31, 2006 since we will be going out perhaps for an RFP for only a period of 1 year. An RFP for a contract of such short duration involves a significant investment of time and effort above and beyond that already expended, and we will essentially have to begin the process immediately in order to be in time for the end of this new contract. Anyway, you can see the dilemma we are beginning to face.

Your comments at your earliest convenience would be appreciated.

Thanks.

Backward date projection (based on the timelines originally provided by PWGSC in April):

- Contract award Dec. 17
- Contract approval (PWGSC) Nov. 16 - Dec. 16
- Financial viability assessment (PWGSC) Nov. 10 - 15
- Financial evaluation (PWGSC) Nov. 8 - 9
- Technical evaluation (CFSC) Oct. 30 - 5
- Forward proposals (PWGSC) Oct. 29
- RFP closing date Oct. 27
- MERX posting (PWGSC) Sept. 16

This assumes we can complete the technical evaluation in one week (which will probably require working through the weekend and some long hours), the RFP would still need to be posted on MERX today in order to have a contract in place for January 1, 2005.

^ potential Public Service strike may very well complicate matters.

\*\*\*\*\*



## List of Abbreviations and Symbols

ACAN	Advance Contract Award Notice
ACL	Audit Command Language
ACS	Automated Contracting System
ADM	Assistant Deputy Minister
AMA	Area Management Advisor
AMO	Area Management Office
CDN	Canadian
CFs	Commitment Forms
CFSC	Centre for Intercultural and Effectiveness Training
CFSD	Centre of Learning for Professional Services
CFSI	Canadian Foreign Services Institute
CFSL	Centre for Language Training
CFSM	CFSI Area Management Office
CFSS	Centre for Corporate Services Learning
CIDA	Canadian International Development Agency
CO	Confirming Order
CRB	Contract Review Board
DCRB	Departmental Contract Review Board
DFAIT	Department of Foreign Affairs and International Trade
DG	Director General
FAA	Financial Administration Act
FLIO	Foreign Language Institute of Ottawa
FLT	Foreign Language Training
GoC	Government of Canada
HAM	Area Management Office, Human Resources
HCM	Assistant Deputy Minister, Human Resources
HFD	Assignments and Executive Management Bureau
HQ	Headquarters
HR	Human Resource
IET	Intercultural Effectiveness Training
IMS	Information Management System
IT	Information Technology
JUS	Justice Legal Services Division
MARs	Monthly Attendance Reports
MERX	Government of Canada's Electronic Tendering Service
MOU	Memorandum of Understanding
MRs	Mandatory Requirements
NAFTA	North American Free Trade Agreement
OLT	Official Language Training
PG	Procurement Expert

PREC	Point Rated Evaluation Criteria
PWGSC	Public Works and Government Services Canada
Q & As	Question and Answers
RFP	Request for Proposal
SAP	System Application Products
SCM	Assistant Deputy Minister, Corporate Services
SMD	Corporate Finance, Planning and Systems Bureau
SMF	International and Domestic Financial Management and Contracting Service
SMFH	Financial Services Headquarters
SMP	Planning, Program Analysis and Budgeting Division
SOW	Statement of Work
SPD	Corporate Operations Bureau
SPPG	Contracting Specialist, Centre of Expertise
SRCL	Security Requirement Check List
TB	Treasury Board
TBS	Treasury Board Secretariat
USS	Deputy Minister of Foreign Affairs
ZIV	Internal Audit Division