

Guide
to
Service Management

**Procurement Policy and Information Technology
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Service Management Guide

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INTRODUCTION

This guide provides assistance and information to OPS managers and staff to effectively manage the delivery of programs or services (to the government or to the public) by third parties once senior management has approved the alternative service delivery (ASD) business case. The focus is on service delivery by one or more private-sector **service provider(s)** selected through a competitive procurement process.

The checklist and issues set out in this guide may also apply to other ASD arrangements such as internal shared services functions or relationships with other governments.

Moving the delivery of programs or services from government to a private-sector service provider can prove to be more efficient and effective. However, we cannot manage the service provider relationship with processes and structures that were designed for direct service delivery. Hence the need for **service management**.

Service management starts with translating **user** needs into a procurement strategy. The business contracts and agreements established through the procurement process must include the necessary incentives for the service provider to work with government as a teammate, to take responsibility for its performance and to tangibly demonstrate the value it brings to the relationship.

These contracts and agreements form the foundation of the relationship, but the success of the relationship will largely depend on the ability of all parties (users, service provider(s), and government) to build a relationship which focuses on:

- user satisfaction;
- service quality;
- continuous service improvements;
- accountability for performance; and
- trust and co-operation.

Effective service management also includes developing strategies and contingency plans to help ensure the continuity of the program or service with minimal disruptions, and to prevent losses and unnecessary expenditures to government.

The OPS organization that manages these service provider relationships will require different skills than one that delivers the services itself. The emerging role of the **service manager** will require people who have the following skills and competencies:

- building and maintaining relationships with private sector delivery partners;
- analysing risk and ensuring the contingency plan is implemented should the quality of the services not be acceptable;
- managing conflict and resolving disputes; and
- communicating with the service provider(s) and the users(s).

This guide includes direction and information on a number of key service management issues that need to be considered in effective service delivery management, together with some tips and lessons drawn from the Canadian public sector.

Service management will be a discipline in high demand as the OPS continues its restructuring efforts. This guide will be regularly updated by bulletins and additional tip sheets as we learn more about effective service management strategies, practices and approaches from other governments across the country and from our own experiences in the OPS.

The information in this guide is not meant to replace legal advice and ministries should seek advice with respect to the RFP and other issues related to ASD initiatives. Ministries must also comply with all relevant Management Board of Cabinet Directives.

1.0 THE SERVICE MANAGEMENT FUNCTION

What is Service Management?

Service management means managing a program or service that is delivered through Alternative Service Delivery (ASD) arrangements with third parties. This guide will focus on service delivery by private-sector parties selected through a competitive procurement process. These ASD arrangements are:

Outsourcing

An arrangement with a private-sector party that assumes responsibility for one or more programs or services that are or were being delivered internally. Outsourcing may, but not necessarily, involve a transfer of assets, facilities¹, and/or personnel² to the private-sector party.

The arrangement is characterized in a contract for a specific length of time. The contract is awarded to the private-sector party that submitted the best valued proposal, and met all qualification and evaluation criteria. At the end of the contract the services will be tendered again.

Partnering

A relationship is established with a private-sector party that possesses the requisite capabilities and capacities to undertake the design and implementation of an innovative program or service delivery infrastructure.

These tend to be large initiatives where the ministry lacks the time, expertise and/or financial resources to undertake the project on its own.

These relationships may be created through use of the Common Purpose Procurement (CPP)

¹ Consult with Ontario Realty Corporation if government facilities are to be sold or transferred.

² Contact Human Resources Branch on employment stability contained in collective agreements. Key impacts would include reasonable efforts, employee bidding, and notice requirements.

process³, where investments, risks, benefits, and pricing are negotiated.

Franchising/Licensing

A contractual or licensing relationship that gives a private-sector party the right or privilege to sell a product or services.

Through a competitive process the successful private-sector party must satisfy requirements and demonstrate it has the specific skills, abilities, and resources to do the job.

The party is essentially an agent for the government, as with vehicle licensing or Ontario Lottery operators. These arrangements are characterized in an ongoing contract or long-term licensing agreement, which contain very specific operating procedures and parameters.

In fact, ASD arrangements can include elements from all three arrangements.

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| <p style="text-align: center;">Service Management</p> <p>covers the life-cycle of a service, from the design of an ASD arrangement, to the selection of a service provider, implementation, and then management of the relationship.</p> |
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Who are the players and what are their roles and responsibilities?

Users

Customers, consumers or recipients of a service, can include ministry program areas, transfer-payment agencies, industry, and the public. User responsibilities can include:

- identifying and expressing service needs, performance requirements and standards;
- paying for services received; and

³ For further information on using the CPP methodology see the “Guidelines for Common Purpose Procurement (October 1998)”.

- providing feedback on the quality of service levels and needed improvements.

ASD Project Managers

The primary responsibility of ASD project managers is to assess and review the current delivery method and consider alternative program or service delivery strategies. If the project manager recommends an alternative that contains an outsourcing, partnering, or franchising arrangement with the private-sector, further responsibilities may include managing the development of the procurement strategy. This will ensure that:

- business needs and objectives are effectively mandated as a procurement document;
- specific bidder requirements are properly defined;
- user expectations are set out;
- service level expectations are defined, and the consequences are outlined if these service levels are not achieved;
- mandatory and effective evaluation criteria are properly defined to ensure an effective competitive process;
- accountabilities and authorities are clearly outlined;
- preference toward a single or multiple service provider(s) is announced; and
- impact on the vendor community has been assessed⁴.

Service Providers

Private-sector bidders who are awarded contracts to provide a specific program or service. They are selected on the strength of their proposals in response to procurement documents.

Service provider responsibilities include:

- providing services according to the terms and conditions of the contract;
- supplying needed information to the service manager (e.g. reports, performance measures and complaints);
- monitoring user satisfaction;
- implementing continuous improvements; and
- planning for contingencies.

⁴ For best practices on determining ministry and vendor performance readiness see Guidelines for Common Purpose Procurement (CPP).

Service Managers

The role of the service manager may be assumed by the current program manager, a project team or a ministry manager.

The Service Manager

acts as a broker between users and the service provider by translating user needs into contracts and service level agreements with the service provider.

Service manager responsibilities include:

- negotiating appropriate contractual terms and agreements (e.g. service level agreements);
- ensuring users are satisfied and service quality meets or exceeds contracted performance standards;
- managing risks;
- planning for contingencies;
- managing external stakeholder issues;
- managing conflict and dispute resolution procedures;
- evaluating the service provider's performance;
- ensuring the contract terms and conditions are being met;
- responding to user complaints and taking corrective action;
- invoking any penalties, rewards, and contract termination clauses;
- administering the budget for service management; and
- answering to ministry management regarding the efficiency, effectiveness, and quality of services, for instance:
 - ▶ the kind of services being delivered by the service provider;
 - ▶ the service management function and the use of public funds.

[Note: The roles and responsibilities of the ASD project manager and the service manager in many OPS organizations are being combined. For the purposes of this guide, this model will be followed and only the service manager will be referenced.]

What skills will the service manager need?

Effective service management will require managers and individuals who have the requisite capabilities and who understand the new multi-disciplined work environment. Service managers will require skills in three key areas:

! Management Skills

- managing projects
- assessing performance
- managing risk
- resolving issues
- making decisions
- planning for contingencies

! Analytical Skills

- financial and cost benefit analysis
- budgeting
- purchasing
- contract and tendering law
- making program links

! Interpersonal Skills

- managing relationships
- coaching and leading teams
- negotiating
- communicating effectively
- resolving disputes

2.0 PROCUREMENT & CONTRACTING CONSIDERATIONS

A successful ASD relationship is highly dependent upon thinking through and planning the relationship.⁵ An effective ASD business case is a critical tool. It will structure and present the program or service objectives, identify delivery options, outline service level expectations, assess risks, and formulate an implementation plan.

If an ASD initiative is approved and it involves the private-sector then a tendering process should follow.

The tendering process⁶ requires the preparation of a procurement document in one of the following formats:

- ! Request for Proposal (RFP) A solicitation for price proposals from qualified bidders to supply complex products or services, or provide alternative solutions to resolve an issue of a technical, professional or management problem.

- ! RFP for Common Purpose Procurement A solicitation for proposals from private-sector partners to invest and share risks and benefits in developing, designing, and implementing solutions to complex business problems that involve several phases. Unlike a traditional RFP, pricing is not evaluated; it is a negotiated item.

Translating the business case strategy into a procurement document is not simple. The service manager may need to address many additional questions (see appendices A & B) which require the advice of purchasing and legal experts.

⁵ Alternative Service Delivery Framework: Guide to Preparing a Business Case for Alternative Service Delivery and Guide to Implementing a Change in Service Delivery.

⁶ For further information see the MBS - Procurement Directive.

PROCUREMENT & CONTRACTING CONSIDERATIONS TIPS & LESSONS

1. Often the service manager does not budget enough time for designing and developing the RFP document. If a well-designed business case is available, it can take up to four months with purchasing and legal assistance to finalize the RFP document.
2. The proposals received from bidders are legal contracts. The fact that the government has not yet accepted the proposal is irrelevant. Under tendering law the bidder has an obligation to provide the services at the prices outlined in their proposal, even if they made a mistake. Therefore, the procurement process should not allow bidders to make any changes to their proposals after the closing date and time.
3. If it is decided not to proceed with an RFP after its issue or if erroneous information is detected in the RFP, the following privilege clause should be communicated to bidders: “The Minister reserves the right to terminate the RFP for any or no reason, and will not be responsible for any losses suffered by bidders.”

To reinforce the message that proposals will be rated against the bidder qualifications and evaluation criteria set out in the RFP, include the following privilege clause: “The lowest or any proposal need not be accepted.”

4. After the contract is signed, arrange a post- award meeting with the evaluation committee to record what events went well, what went wrong, and what can be improved when the contract is re-tendered.
5. A recent national trend in government RFPs is to include anti-lobbying clauses. These clauses are designed to disqualify bidders who attempt to influence the evaluation and selection process.

Example: An Ontario municipality in the GTA recently lost a \$ 1 million lawsuit brought against it by a construction company who thought it should be awarded a major road construction contract. The decision to award the contract to another bidder was a result of some heavy lobbying to local councillors. Earlier this year a regional government in Ontario lost a \$ 6.5 million lawsuit brought against it for the same reason.

In both decisions the court has said very clearly that bidders are entitled to have the procurement process run by the rules, and conditions cannot be introduced after the bidding period is closed.

2.1 Risk Management

In contrast to traditional procurement, ASD relationships expose the government to a variety of new risks from the actions or inactions of the service provider (e.g. breaches of privacy, disruptions of essential services, exorbitant pricing for government services). At the same time, ASD vendors may increasingly “push back” with respect to contractual provisions and other requirements which are seen to impose undue levels of risk.

Prior to entering into an ASD relationship, it is important to test the proposed business model through consultations with the vendor community. This will help to facilitate the identification, analysis, assessment and management of any potential risk.

In general, the government takes a “strict approach” to risk management in contracting including treatment of liability and indemnification. The extent to which risk management tools are necessary is a function of the scope of services and how much the contractor can and will indemnify against. In construction contracts, the contractor typically agrees to total indemnification since the contractor is in charge of the project. Similarly with supply and services contracts, a total indemnification in favour of the crown can be obtained.

At the same time, the government’s approach to risk management in contracting through performance guarantees, liability and indemnification provisions has been evolving on a case by case basis from the historical model of unlimited liability to one in which it may be necessary to accept or negotiate limitations on supplier liability.

For example, suppliers are often unwilling to agree to unlimited liability in cases where successful performance is highly contingent on matters outside their control such as third party actions, e.g., Y2K conversion and compliance services.

In information technology contracts, the Crown is less likely to obtain complete indemnity as the IT supplier cannot control the use of the goods and services. Liability in such cases is typically limited to direct damages from the IT supplier’s failure to perform under the contract and is generally capped. Such damages often fall within a range of amounts paid to the IT supplier in a year or over the life of the agreement.

It is necessary to take the time to identify the risks and thoroughly analyse and assess the potential impacts. A detailed risk management plan, which should be a component of a well developed business case, will help to shape the risk profiles for both the public sector and private sector service provider. In particular, ministries will need to ensure that the risk instruments incorporated into the procurement document are appropriate and proportional to the risks associated with the initiative.

The analysis of risk and the selection of risk management instruments should take into account the following considerations:

- risk may be effectively managed through flexibility related to price, scope and service levels rather than through contractual terms and conditions such as limitation of liability, indemnification and warranties;
- the richer the business case, the more likely that the vendor will be to accept a higher amount of risk;
- the relationship between risk and controls (eg. a service provider will require a greater risk premium if it cannot be guaranteed certain transaction volumes);
- the assignment of risk for both parties is reciprocal and appropriately balanced;
- the availability for a due diligence process to allow for a confirmation or adjustment of the business model;
- the life cycle of the initiative and the extent to which risk declines as implementation “matures”; and,
- ensuring that the provisions for the payment of damages are not greater than potential revenues or profits, or that which may result in bankruptcy for the vendor.

Consultation with your purchasing professionals and legal experts is critical when engaged in the risk management process.

What risk management instruments are available?

Service Provider performance

- ! Penalties Setting specific monetary amounts to be paid if agreed upon service levels are not met (or are exceeded, thereby sacrificing performance improvements). These penalties could be calculated on a fixed rate per occurrence or escalate with the number of occurrences.

A threshold level should be established at which monetary penalties are no longer effective. The contract should be terminated when exceeding the threshold level.

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| ! | Bonds & Letters of Credit | <p>Having a third party guarantee that the service provider will fulfil its performance obligations or compensate the ministry by a specific monetary amount.</p> <p><i>(See appendix C - Risk Management - Surety Bonds & Letters of Credit)</i></p> |
| ! | Qualification | <p>Defining mandatory and indemnification qualification criteria in the procurement document that will ensure only proposals from qualified firms will be accepted and evaluated. This criteria may include requiring bidders to have ISO 9000 certification.</p> <p>Experience is often used as a qualification criterion. Consider requiring bidders to demonstrate they have the underlying skills required or the relevance of their experience.</p> |
| ! | Force Majeure | <p>Ensuring that the service provider takes reasonable efforts to implement contingency measures to protect against delays or failures due to flood, fire, explosion, war, riot, power failure or act of God.</p> |
| ! | Control over Assignments & Sub-Contracting | <p>Prohibiting the service provider from assigning or sub-contracting any part of the contract to another party, without the prior consent of the ministry.</p> |

Service provider's compliance with public policy

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| ! | Declaration | <p>Specifying all legislative and regulatory requirements with which the bidders must comply (e.g. Tax compliance and Canadian steel content declarations).</p> |
| ! | Copies of Licences | <p>Requiring the service provider to submit proof of operating licences, certificates, and accreditation documents (e.g. Workers Safety & Insurance Board's certificate, CSA approval).</p> |
| ! | Demonstrate Ability | <p>Seeking evidence from the service provider to prove it is complying or can comply with legislated and regulatory requirements (e.g. French Language Services Act, Freedom of Information and Protection of Privacy Act).</p> <p><i>(See appendix E - Managing Information and French Language Services)</i></p> |

- ! Termination Making it clear that a major failure to comply with specific legislation or regulations, or a record of failing to comply, will mean the contract will be terminated without a penalty to the ministry.

Third party damages caused by the service provider

- ! Indemnification Requiring the service provider to indemnify and save harmless the ministry and any users from and against all claims, actions, suits, and proceedings arising out of the contract.
- ! Insurance Liability Coverage Stipulating that the service provider must maintain comprehensive third party liability insurance from an insurer acceptable to the ministry. This may include a cross liability endorsement that has the ministry and known users named as additional insured.

To deal with theft by the service provider

- ! Audit Inspection Having the contract require the service provider keep detailed records of the services provided and to make them available to the ministry for audit, throughout the agreement and for a number of years after.

The contract should also state that if the ministry suspects theft, it reserves the right to withhold any payment to the service provider pending assurance from an audit.
- ! Fidelity Bond & Insurance Requiring the service provider maintain comprehensive insurance coverage or fidelity bonding in place to cover theft by its employees.
- ! Security Procedures Ensuring that the service provider has or will have a security protocol in place. This may include conducting security clearances for key employees.

To protect government property, assets, and information with service provider

- ! Escrow Requiring the service provider who has developed computer software to maintain an original source version in an escrow arrangement with an agent acceptable to the ministry.

- ! Confidentiality Requiring the service provider to maintain and protect records in a manner that information will not be disclosed inappropriately.

- ! Ownership of Data Making it clear that any data and information generated by the service provider in delivery of the program or service will become the property of the ministry.

(See appendix E - Managing Information and French Language Services)

- ! Media Silence Requiring the service provider to get the ministry's approval before discussing the program or service with the media.

- ! Maintenance Contracts Requiring the service provider to establish maintenance contracts for ministry owned assets it is using.

To anticipate and deal with service provider insolvency

- ! Financial Statements Requiring the service provider to submit annual financial statements (including the parent organization) to the ministry for review.

(See Appendix D - Risk Management-Analysing Financial Statements)

- ! Credit Bureau Reports Obtaining directly or requiring the service provider to submit periodic credit bureau reports to the ministry for review.

- ! Receivership Stating in the contract that the ministry reserves the right to enter into contract with another party if a receiver is appointed to manage the affairs of the service provider. The contract should also state that the ministry will not be responsible for any losses the service provider suffers.

- ! Termination Making it clear in the contract that if the service provider is judged to be bankrupt or makes a general assignment for the benefit of its creditors the ministry may terminate the contract without penalty.

To prepare for transition to a new service provider

- ! Transition Clause Stating in the contract that the service provider must co-operate fully during the transition to a new service provider. This may include allowing the new service provider to shadow and observe the service provider in the final days (e.g. 60 days) of the contract.

- ! Holdbacks Writing into the contract that the ministry may hold back all or a percentage (e.g. 10%) of payment to the service provider in the final days (e.g. 60 days) of the contract if the ministry suspects the service provider is not co-operating during the transition to the new service provider.

RISK MANAGEMENT TIPS & LESSONS

1. Bonds and Letters of Credit cost bidders money, which will be recovered through their bid pricing or lost if they are the losing bidders. These risk management instruments are best used in construction, facility management arrangements or when the service provider is collecting or holding ministry funds.
2. Penalties in government contracts have traditionally worked best in construction or very technical arrangements in which the service provider has a great deal of operational control. When setting penalties remember the words of Gilbert and Sullivan: “The punishment must fit the crime.”
3. It is important to ensure that the risk management instrument is proportionate and appropriate to the risk being managed.

In fact many bidders are increasingly challenging the use of certain risk management instruments and the level of risk transferred to them, eg. indemnification and liability.

4. Each ASD program or service may require unique risk management instruments. It is advisable to consult with procurement and legal experts.

Example: As part of its arrangement with a service provider, an Ontario municipality supplied it with new computer equipment. Ownership of the equipment would remain with the municipality and would be returned at the end of the contract.

The municipality recently received 24 worthless 386 computers back from the service provider. In its new arrangement, the municipality has protected the value of its property by inserting a replacement cost/value clause in the RFP and contract, stating that the service provider will return new computer equipment that represents technology of the day.

2.2 Rewards and Incentives

In contrast to traditional commodity or fee for services contracts, effective service management relationships will depend on arrangements with service providers structured as “true partnerships,” or involve “win/win scenarios,” the “sharing of risks and rewards” or are “incentive/reward driven.”

What reward and incentive mechanisms are available?

Incentive Based Pricing Models

When considering using incentive based pricing models, the service manager should evaluate the risks and potential benefits to the ministry. The use of these models must be defensible in terms of achieving value for money. Also, the RFP should clearly state which, if any, incentive based pricing models will be applied in the contractual relationship. Some possible models:

- ! **Cost Plus Margin** is a pricing model which allows the service provider to receive allowable costs plus a profit margin, usually a percentage of costs or capital employed.
- ! **Cost Plus Ceiling** is similar to cost plus margin in which the service provider receives allowable costs plus a profit margin up to a maximum level.
- ! **Cost Plus Bonus** is similar to cost plus ceiling except there is an incentive to the service provider if it can reduce costs and improve service. Service levels will be outlined with an expectation of a minimum/maximum cost range. If the service provider can hold costs to the maximum agreed, it will receive a bonus fee calculated on a predefined formula.
- ! **Cost Plus Management Fee** is a pricing model in which the service provider receives allowable costs plus a fixed management fee for achieving defined service levels or providing specified services.
- ! **Gain/Revenue Sharing** is a pricing model that could be combined with a cost plus approach as a further incentive to reduce costs, enabling both parties to benefit from service level improvements and/or lower costs.
- ! **Performance Pricing** is a pricing model in which the service provider must achieve a minimum agreed upon service level in order to receive contracted prices.

- ! **Performance Bonus** is a pricing model with built in bonuses for achieving a given service level, usually tied to a milestone date or cost level. As an incentive to finish projects early and within budget, construction and information technology contracts often include performance bonuses.

Contract Extensions

Often the purpose of contract extensions are missed as an effective reward or incentive mechanism.

- ! **Contract Extensions** are a contract provision where the ministry has the option of extending the contract with the service provider for a further term, based upon the same terms and conditions contained in the contract. The purpose of the contract extension is to provide a safety cushion to the service manager in the event of conflicting project priorities, or if a lack of resources delays the development and award of a new contract.

It often seems these contract extensions are an automatic practice in the OPS, for the reasons discussed above. Some service managers believe that exercising a contract extension is a reward to the service provider.

However, this may not always be the case. For example:

- The service providers who are performing poorly often have their contract extended. This conveys conflicting messages. The message to the service provider is its performance is acceptable, and the message to the user is that service quality will not be improving.
- Exercising the extension in a fixed unit pricing model contract when prices are rising due to inflation or where there are industry shortages may prove to be more of a penalty than a reward to a service provider.

An example of an RFP and contract extension clause is:

The ministry will have the option of extending the three-year term of the contract for a further period of up to one year, this extension to be on the same terms and conditions contained in the contract. This option will be exercisable upon three months written notice.

Greater business opportunities

- ! **Allow Contract Usage** by other ministries and members of the broader public sector. This may present opportunities for the service provider to increase its profile and business volume either directly, or by participating in ministry trade and marketing presentations.

- ! **Guaranteeing Business Volumes** in the procurement documents may attract more qualified bidders because there is a degree of certainty of at least a minimum return on their investments. Guaranteeing business volumes may also result in proposals which have a lower over-all cost to the ministry or may result in savings derived from a scaled or volume pricing model.

REWARDS & INCENTIVES TIPS & LESSONS

1. If the service manager decides to use incentive based pricing models in the RFP, evaluating and comparing proposals may be quite difficult. They should assess the ongoing administration and resources required to validate the service provider's information in certain pricing models (e.g. cost-plus), versus the potential gains to be achieved.
2. Service managers should be cautioned against granting contract renewals or extending contracts beyond the term of the RFP. This could be setting up a situation of single sourcing which violates key principles of government contracting and corporate directives.
3. Many service providers feel they should be advanced points for excellent performance when the program or service is re-tendered. Service managers should be cautioned not to grant any special status to the current service provider or to any other bidder. Federal and Provincial government trade agreements and corporate directives specifically prohibit such practices.
4. A recent trend in government is to rethink policies that prohibit rewards to service providers.

Example: Private-sector vehicle licensing agents in most provinces (including Ontario) have been restricted to owning and operating one facility. It had been felt that the owner needed to be available to manage the operations. But now, to reward those agents who are providing excellent service, many provincial governments are inviting them to bid on operating multiple facilities.

5. Some obstacles to implementing rewards and incentives are:
 - Procurement practices which focus on fixed pricing arrangements;
 - Inability to attribute benefits to the respective efforts of government and the service provider;
 - Management's perception that the service provider's rewards and incentives should be limited to the profit margins it has built into its proposal pricing.
 - Lack of reward and incentive guidelines or models.

3.0 SERVICE LEVELS

In any contract, and more significantly in cases of ASD, a clear definition of accountability is essential. The challenge is to develop a relationship that clearly defines roles and responsibilities. Using performance measures (service levels) is an effective way to address these accountability issues. Having well-defined service levels will reduce ambiguity in the agreement with the service provider and assist in creating a more positive working relationship.

Properly structured service levels should provide necessary incentives for the service provider to work with the ministry as a teammate, take responsibility for their performance and tangibly demonstrate the value they bring to the relationship.

ASD relationships are most successful when the service provider becomes a natural extension of the program and participates in continuously improving the service delivery and other management processes.

When creating service levels, there are a number of issues the service manager should focus on:

- ! clearly understanding who is accountable for what;
- ! identifying the service levels that will reflect the needs of the program or service;
- ! understanding how the responsibilities will be divided between the ministry and the service provider;
- ! identifying the consequences if the service provider fails to meet service levels; and
- ! ensuring the contractual obligations as defined in the RFP.

Service managers must ensure that the RFP communicates these service level expectations to prospective bidders. It can be very difficult to define service levels in much detail in the RFP. The RFP should convey that the ministry will require the successful bidder to commit to minimum service levels and enter into service level agreements during contract negotiations.

What are service level agreements?

Service level agreements (SLA) provide significant details on the service levels that are important to the success of the program or service. They are also a mechanism for reviewing and amending these levels on a regular basis by:

- ! identifying the accountability and responsibilities of the service provider and ministry;
- ! defining the service to be provided and its importance to the program;
- ! setting limits under which the service levels can be applied;
- ! clarifying the monitoring and reporting requirements;
- ! recording achievements and results; and
- ! driving further change and improvement.

It is imperative that service level agreements include measurements that address key program issues. These measures should be appropriate to the services being provided and should relate to factors the service provider and the service manager can control or affect.

What types of performance measurements are there?

Service Efficiency Measures

Focus on comparing service inputs to service outputs.

Inputs include:

- staff
- equipment
- consumables
- information

Service efficiency measures require definition of:

- inputs used to deliver the service (numerator); and
- unit of service delivery (denominator).

For instance, an efficiency measure can be expressed as a dollar per unit of output.

Service Effectiveness Measures

Set out the extent to which pre-determined program or service goals and objectives have been met. These goals and objectives are often stated as outcomes.

Outcomes include:

- knowledge
- skills
- abilities
- attitudes
- behaviour
- circumstances

Outcomes should be defined prior to the delivery of services for monitoring the progress.

Service effectiveness measures require definition of:

- actual service outcomes (numerator); and
- planned service outcomes (denominator).

For instance, a desired outcome of a training program might be that its graduates have the knowledge and skills needed to enter the labour force.

Service Quality Measures

Compares service output characteristics to set standards.

The main types of quality characteristics are:

- **Timeliness** - for instance, percentage of deliveries within a standard time or average cycle time.
- **Accuracy** - output conforms to an objective standard (For instance, this can be expressed as a percentage of defects, cost of rework).
- **Satisfaction** - output conforms to user expectations and needs, measured either in improvement over previous periods or in comparison to other program or industry benchmarks.

Periodic user surveys should be undertaken to gauge the service provider's:

- technical competence; and
- responsiveness and flexibility in dealing with problems, complaints, warranty claims, and communication skills.

Service quality measures require definition of:

- the characteristics of service delivery that are important to the effectiveness of the service; and
- reasonable user expectations. Note that 100 percent satisfaction is not necessarily a realistic target.

How should service level agreements be structured?

Service Level Agreements (SLA) are contractual documents and should be viewed as such. Legal counsel should always be consulted. To guide the service manager in developing a SLA the following framework is presented.

Framework for SLA

| | |
|--------------------------------|---|
| Objective | The reason for measuring the service level. |
| Definition | A specific description of the service level and its importance to the program. |
| Method | A description of how the achievement of the service level will be measured; which performance and user satisfaction measures will be used; which data sources will be used; and how the data will be captured. |
| Service Levels | A set of values that define minimally acceptable operational performance and user satisfaction for the program. Service provider's performance will be compared against these values to decide compliance. (<i>See types of performance measurements</i>) |
| Responsibility | Sets out who is primarily accountable for performing the tasks necessary to meet service levels. |
| Period | The time over which performance will be validated against the service level. |
| Limitations | The limitations and conditions under which the service level can be applied. |
| Reporting | A sample report or layout used as a reference for how the service levels will be presented. Discuss getting direct access to service provider information systems. |
| Continuous Improvement targets | Any performance targets to which the service manager and service provider agree. Also include industry standards, or organizations to compare service levels against. |
| Action | Definition of what happens when service levels are not met. If penalties to the service provider are to be imposed, then identify the amounts, calculations, and processes involved. |
| Review | Date when SLA is to be renegotiated. |

SERVICE LEVELS TIPS & LESSONS

1. Negotiate service level agreements prior to any contracts being signed. Once the contract is underway, it may be too late. The service provider and service manager are usually eager to shift attention to other areas of business.
2. Designing measures requires a complete understanding of the business. Involve staff who know the business at the operational level or seek outside consultants.
3. When negotiating service level agreements they should be flexible and allow for the addition of new measures. This is especially important in long-term and for first time contracts.
4. Service levels or industry standards may not always exist before entering a contract. In these special cases, the service manager and service provider should agree to a process involving a third party to design or monitor service levels.

Example: The Confederation Bridge that links Prince Edward Island to mainland New Brunswick, is the longest bridge ever built over ice-covered water. Performance standards or measures did not exist for this type of structure. The Government of Canada and the builders of the bridge agreed to a 20-year performance monitoring team consisting of the Research Council of Canada, select engineering firms, and Carlton University.

4.0 RELATIONSHIP MANAGEMENT

The bulk of service management activities during the contract will involve managing the relationship with the service provider.

4.1 Monitoring & Evaluating Performance

Intrinsic to any ASD relationship is the fact that the service manager will depend on receiving timely and accurate operational data to analyse and evaluate the service provider's performance. The main sources of data collection and reporting are:

- ! **Service Provider**
 - reports generated by business systems; and
 - inspection reports prepared by staff (e.g. quality inspectors).

- ! **Ministry**
 - systems which the service provider is required to use; and
 - staff inspection or quality assurance reports.

- ! **Users**
 - written letters and/or a log of complaints; and
 - responses to surveys and questionnaires.

- ! **Other Parties**
 - published performance reports and trade journals;
 - promotional material produced by the service provider or their competition; and
 - information or reports prepared by consultants.

Effective data gathering and analysis is key to assessing the achieved continuous improvement efforts. This should be a joint responsibility of the service manager and the service provider. It is important that reports and information used in monitoring are accessible to both parties, and are determined to be reliable and verifiable.

The service manager is responsible for evaluating the service provider's performance. The service provider's performance over a specific time needs to be compared against the service level agreement (SLA) to determine compliance. Part of the service manager's responsibility is to notify the service provider of evaluation results. If the service provider's performance does not meet minimal service levels, then any agreed upon actions or penalties outlined in the SLA should be imposed.

4.2 Effective Communication

A consistent communication chain must exist between the service provider and the ministry. While this may seem obvious, service providers are often given confusing or conflicting direction from multiple ministry sources. Therefore, the ministry and the service provider need a single point of contact to co-ordinate these directions.

The single point of contact for the ministry should be the service manager, and the service provider should appoint a similar contact person who is often called the account representative.

Frequent informal communication between the service manager and the account representative are essential to the success of the relationship. However, formal service meetings are needed on a regular basis. In some cases, it will be necessary to establish formal joint management or governance structures to ensure continuity over the life of the relationship.

What is the purpose of these service meetings?

- ! To influence behaviour by setting joint objectives, priorities, and work plans.
- ! To discuss new technologies, processes, or structural changes in the service provider's or ministry's organization that may impact on the contractual relationship.
- ! To invoke any consequences or penalties if service levels are not being met.
- ! To address any user complaints received by the service manager or service provider and review what has to be done to resolve them.
- ! To identify evolving user requirements and needs and to determine if structural or process changes are needed to meet them.
- ! To discuss the impact of new government or ministry directives and policies (e.g. conflict of interest).
- ! To deal with issues and problems arising from the contractual arrangement. Problems not solved should be escalated to the negotiated conflict resolution process.
- ! To gather as much information as possible about the service provider's organization or industry, for instance, reports of large financial losses could affect the success of the relationship.

- ! To record any commitments the parties make. These will serve as a reference for staff, the conflict or dispute resolution process, and any legal proceedings that may arise from the relationship.

Who should attend these service meetings?

Aside from the service manager and the account representative, key operational staff from both organizations should attend. Of course, the structure and complexity of the relationship may require other professionals from each organization to attend.

Senior managers who are part of the conflict resolution process may sometimes be needed to solve conflicts that arise in these meetings. Because these people have to be objective and stay at arm's length, they should not generally attend the meetings.

These meetings should be held at least quarterly for large contracts, while semi-annual meetings may be sufficient for others. More frequent meetings may be needed in various phases of the contract or when problems arise.

4.3 Administration

What are the main contract administration activities in service management?

Contract Compliance

The service manager should ensure that the service provider meets the provisions set out in the contract by:

- determining the accuracy of the service provider's invoice pricing and matching it with contract pricing structures;
- verifying that the service provider is maintaining insurance, bonds or other risk management instruments;
- determining that any penalties imposed on the service provider are settled;
- ensuring that the service provider gives the ministry all performance, sales, or financial reports on time; and
- evaluating any changes to the service provider consortium⁷ or subcontracting arrangements.

⁷ A Service Provider consortium or joint venture is an association of several private-sector firms.

Contract Documentation

The service manager should ensure that a proper ministry contract folder or database is maintained to include:

- a copy of the RFP;
- a list of all bidders and copies of short listed proposals;
- the evaluation committee’s notes and bidder presentation material;
- agreements and contracts signed with the service provider;
- copies of all service provider licences, performance bonds, and other risk management instruments;
- performance monitoring and service provider reports;
- meeting’s minutes and correspondence with the service provider;
- contingency plans from both the service provider and the ministry;
- promotional, marketing or communication materials from the service provider;
- and
- the process for conflict and dispute resolution, and any settlement of issues.

Contract Extensions, Renewals, and Terminations

! **Contract Extensions and Renewals**
(see Section 2.2 - Rewards & Incentives)

! **Contract Termination**

There are four ways to end a contractual relationship:

- **Expiration** The agreement term has elapsed and the contract comes to a natural end. The service provider is paid for all work done.
- **Convenience** Parties to the agreement mutually agree to end the relationship and settle with each other.
- **Breach** The actions or inaction of the service provider has violated the contractual arrangements to which it has agreed. This could be as a result of poor performance, theft, insolvency or abandonment of the contract. Often in these cases one party will bring legal action against the other and the courts will be asked to settle any damage claims.

- Other A disaster or act of God makes it impossible for the service provider to perform the contracted program or service. The service provider is paid for all work done.

Re-Tendering

Prior to re-tendering the program or service the service manager should determine if current service levels satisfy user needs and, if the program or service will continue to be delivered by a private-sector service provider or will the ministry re-assume delivery.

If the re-tendering option is chosen, the service manager will have to start developing a new RFP and contract.

Transition to a New Service Provider

A critical stage in the relationship is the smooth transfer from one service provider to another. The service manager should:

- ! notify users of the change as soon as possible;
- ! determine if the previous and new service provider will provide overlapping service for a given time;
- ! decide if any risk management instruments held from the previous service provider should be released;
- ! ensure that all necessary data and information from the previous service provider is transferred to the ministry or to the new service providers; and
- ! invoke appropriate contract provisions (e.g. holdbacks) if the previous service provider does not co-operate during transition.

RELATIONSHIP MANAGEMENT TIPS & LESSONS

1. Keep the relationship professional. The service manager and the account representative may share similar goals, but it is important to remember there are cultural differences within the organizations. The account representative works in a profit environment, where motivational and accountability factors are quite different.
2. Ensure that users of the program or service who encounter problems with the service provider's performance know to contact the service manager.
3. Rotate the location of service meetings, meet occasionally at the service provider's site. Valuable information can be gained from observing the service provider operations.
4. Do not depend solely on statistical reporting measures to decide if the service provider is performing at agreed upon service levels. The service provider's performance and other events can change quickly and the user is often the first to notice. Where possible the service manager should establish networks with key users to learn of these changes, or the service manager may have to do regular service testing.

Example: A ministry was receiving regular quarterly reports from its service provider and conducted annual user satisfaction surveys. The service provider decided to close its provincial call centre and re-route users to its national call centre, yet did not inform the service manager. Hundreds of users became frustrated dealing with the new call centres waiting periods, untrained operators, and busy signals. Most users did not complain or take the time to write letters to the service manager, hence the service manager only found out about the problems months later when analysing the next quarter's performance reports.

5. Do not wait until regular service meetings to receive written instructions or requests. Ask the service provider to confirm commitments in writing as soon as possible.

Example: A large international courier company changed its account representative with a ministry four times within one year. No written communication existed to bind the account representative to previous commitments made by his or her predecessors.

5.0 CONTINGENCY PLANNING

The service manager has an obligation to identify, evaluate, and implement strategies to reduce or eliminate risks. Effective risk management does not end with inserting specific contract clauses or requiring certain risk instruments from the service provider. It also requires developing strategies and contingency plans to help ensure the continuity of the ASD program or service with minimal disruptions, and to prevent ministry losses and unnecessary expenditures.

What are some major risks that may arise in a service provider relationship and what are the contingency planning considerations?

Ensuring the continuity of key personnel and organizations for long term service management relationships will be a significant challenge for both the OPS and vendors. Successful long term service management will likely require a much more “institutionalized relationship” than is the case in traditional contracting solutions.

Changes in key personnel within the service provider

When there is a change in the key personnel within the service provider, there may be a risk that the expected service delivery may not be achieved and that problems may not be resolved as efficiently or effectively. It is suggested that the service manager work with the service provider to ensure the change will not negatively impact the relationship.

There should also be a reconfirmation of expectations and the service manager should monitor that the service levels are being maintained.

Contingency planning considerations:

- maintaining back-up personnel for key positions in the service provider;
- ensuring the service provider has put in place appropriate knowledge transfer mechanisms; and
- notifying the service manager and users of the change as soon as possible.

Change in ministry service manager

A new manager is required to replace the service manager.

Contingency planning considerations:

- retaining staff with expertise to replace the person;
- ensuring that a proper contract folder or database is maintained and updated; and

- notifying the service provider and users of the change as soon as possible.

Dependency on a single service provider

This is especially true in long-term contracts with an external service provider. Currently OPS directives do not prevent or limit long-term relationships and in fact may encourage them (e.g. Common Purpose Procurement).

The greatest fear in a long-term relationship is that in-house operational knowledge will be lost and the ministry will be dependent on the expertise of the service provider's staff and proprietary technology. Contract terms and conditions which the ministry has placed in the agreement over time become less effective and may no longer be practical (e.g. invoking a contract termination clause).

Contingency planning considerations:

- re-tendering every three to seven years;
- understanding the service provider's cost, drivers and business plans;
- monitoring the financial health of the service provider's business by reviewing periodic financial statements and credit reports;
- maintaining a network with key service provider's personnel;
- retaining outside expertise to consult or monitor performance;
- being aware of industry players and developments, and attending seminars and conferences;
- requesting that the service provider submit disaster recovery plans and ensure they are updated periodically; and
- setting up escrow arrangements to store critical information and processing system software.

The service provider is now unable to meet contract service levels

The service provider has overestimated its capabilities or capacity to perform at the required service levels. Of course, it could be that the contract service levels are not practical or reasonable.

Contingency planning considerations:

- determining the risk to the government and the public of disruptions in service;
- establishing (if not already in place) parameters for acceptable changes to pricing structure;
- renegotiating service levels on an interim basis so the service provider can continue to deliver the program or service, and make plans to re-tender the program or service as soon as possible; and
- invoking the contract cancellation process and begin negotiations with another service provider (if a contract was awarded to more than one).

The service provider would like to renegotiate the contract

The service provider has determined it is losing money because of the contract pricing structure and would like to renegotiate because: it has underestimated the resources required to deliver the program or service; unforeseen conditions have caused marketplace price increases to raw materials; or regulatory changes have imposed new processes or conditions.

Contingency planning considerations:

- determining the risk to the government and the public of disruptions in service;
- establishing (if not already in place) parameters for acceptable changes to pricing structure;
- establishing time frames for achieving contractual service levels and performance;
- renegotiating contract pricing structure on an interim basis so the service provider can continue to deliver the program or service, and make plans to re-tender the program or service as soon as possible; and
- invoking the contract cancellation process and begin negotiations with another service provider (if a contract was awarded to more than one).

A change in the structure of the service provider consortium

The parties of the consortium are having difficulty working together, or one party is adjudicated bankrupt, or one party wishes to end its participation in the consortium, or there is a switch in the prime of the consortium.

Contingency planning considerations:

- continuing the relationship if the consortium is a partnership agreement, while being prepared to negotiate a new interim agreement with the remaining parties, and possibly plan to re-tender the program or service as soon as possible;
- determine to what extent the new prime understands and accepts the basic tenets of the relationship (ie. scope, business and financial arrangements) and is capable of sustaining the financial and service capabilities required by the project (ie. A “mini-evaluation”), and determining if the new relationship will be essentially the same as that with the previous prime;
- being prepared to renegotiate service levels on an interim basis so the service provider can find new parties to the consortium. Invoke the assignment clause of the contract and retain right to approve new subcontracting or new members to the consortium;
- invoking the contract cancellation process and begin negotiations with another service provider (if a contract was awarded to more than one service provider) or with another bidder whose proposal was under consideration; and
- being prepared to design and develop a new RFP.

A receiver has been appointed to manage the affairs of the service provider

The service provider has made a general assignment for the benefit of its creditors and a receiver has been appointed to manage the business until new ownership capital can be found. During this period the possibility of service disruptions is high and meeting contract service levels is unlikely.

Contingency planning considerations:

- continuing the relationship if the receiver intends to operate the business until new ownership or financing can be obtained, and invoke the contract receivership clause but do not cancel the contract. Be prepared to begin negotiations with another service provider (if the contract was awarded to more than one service provider) or with another bidder whose proposal was under consideration (This would only be possible if the period of irrevocability has not expired. If it has expired then such negotiations would constitute a single source and should only be considered under urgent circumstances); and
- being prepared to design and develop a new RFP and/or determine the extent to which some of the services may be available through corporate Vendor's of Record (VORs).

Service provider has been adjudicated bankrupt

The service provider is unable or unwilling to fulfill the requirements of the contract and ceases to provide any program or service activities.

Contingency planning considerations:

- offering temporary employment contracts to the service provider's staff;
- invoking the contract insolvency clause but do not cancel the contract. Be prepared to begin negotiations with another service provider (if the contract was awarded to more than one service provider) or with another bidder whose proposal was under consideration (This would only be possible if the period of irrevocability has not expired. If it has expired then such negotiations would constitute a single source and should only be considered under urgent circumstances); and
- being prepared to design and develop a new RFP and/or determine the extent to which some of the services may be available through corporate Vendor's of Record (VORs).

CONTINGENCY PLANNING TIPS & LESSONS

1. Service managers should plan to deal with major relationship risks (e.g. receivership of the service provider). When designing these plans consulting with legal and other experts may be beneficial. To be effective, these plans should be reviewed and updated periodically.

Example: An Ontario municipality built a new \$10 million sports complex (hockey rinks, fitness, wave pool, and conference facilities) and then out sourced the management to a Canadian subsidiary of a sports management firm headquartered in the UK.

During the second year of the contract the director of parks & recreation was surprised to learn that the Canadian subsidiary had just been forced into receivership.

The media was quick to report the news. Suddenly the municipality's switchboard was handling hundreds of enquires and calls such as:

- Fitness club members asking about the status of their memberships
- Parents asking whether the rinks will be open for hockey games and tournaments
- Groups wishing to cancel their conference bookings
- The media wanting statements
- Local creditors of the outsourcing company concerned about being paid
- Staff of the outsourcing company wishing to apply for jobs

Municipal council called an emergency meeting asking the director of parks and recreation to brief them on his plans to deal with this matter. The Director, new to the position, learned that there were no contingency plans prepared by his staff or predecessor.

2. Users need to be informed about service disruptions as quickly as possible.

Example: If a private-sector vehicle licensing agent goes out of business, most provinces (including Ontario) have contingency plans, including communication strategies, to advise local users of any service disruptions. In small centres where other agents may not be available, the ministry will place ads in local newspapers advising users of possible alternatives, addresses of temporary locations, and how it may affect service.

**CONTINGENCY PLANNING
TIPS & LESSONS**

3. Negotiating interim contractual or service level agreements with the service provider when unforeseen industry or regulatory changes occur, is usually a good business practice.

Example: A ministry's contract with a large travel agency included a revenue sharing agreement. The ministry received a percentage of commissions earned by the travel agency on Ministry air travel. A few years into the contract, the airline industry changed the commission structure under which it paid travel agents. This had a major impact on the ability of the travel agency to meet its contractual agreements with the ministry. Instead of terminating the contract, both parties agreed to a new interim arrangement and the ministry began developing a new RFP.

6.0 CONFLICT AND DISPUTE RESOLUTION

There are two key elements of an effective service management structure: a mutually acceptable process for dealing with problems and conflicts on matters covered by the contract; and a more formalized dispute resolution procedure.

All parties should recognize that problems, issues and disputes will likely arise in some form over the relationship.

What are some main sources of conflicts and disputes?

- ! Changes in the business need or financial viability of the project.
- ! Interpretation of the contract by one or more parties.
- ! Changes the service manager makes to the requirements.
- ! Poor communication between the parties.
- ! Delayed decision-making which leads to increased costs.
- ! A service provider's failure to meet minimum service levels.
- ! Cultural differences between the parties.

What are some best ways to prevent conflict and disputes from arising?

- ! Write all agreements between parties in clear, unambiguous terms.
- ! Each party should increase its knowledge about the other.
- ! Rely on business practices that are generally accepted in industry.
- ! Establish effective communication channels that encourage joint problem solving.
- ! Agree on a conflict resolution process where senior managers can negotiate settlement to problems or conflicts before they develop into disputes.
- ! Agree on alternative dispute resolution (ADR) methods to settle any disputes that cannot be settled from the conflict resolution efforts by parties.

Why develop a conflict resolution process?

Many contracts contain conflict resolution clauses similar to the following:

The Minister will decide any questions arising between the parties, and in particular the meaning of anything contained in the contract.

Clauses like these tend to create an adversarial environment, and do not lend themselves to ASD relationships very well. Instead, senior managers for all parties should be given an opportunity to negotiate solutions to problems or conflicts which arise from the agreement, before they escalate into disputes requiring intervention from the courts or an ADR method.

Large complex projects may require a number of dispute resolution processes depending on the nature of the issue.

What points should be considered when developing a conflict resolution process?

- ! Decide which senior managers from each party will be involved in the conflict resolution process.
- ! Decide which matters will be handled by the conflict resolution process(es).
- ! Decide how one party serves notice to another party on the commencement of the conflict resolution process.
- ! Determine the time limits senior managers have to find a negotiated settlement. Any conflicts that are not settled may have to be escalated to an ADR method.

What are the most common alternative dispute resolution mechanisms?

The most common types of ADR are arbitration and mediation. These methods tend to resolve disputes faster and more cost effective than litigation.

Arbitration

The parties submit the situation to an impartial person or panel, often lawyers or industry experts, who decide which interests should be satisfied and which should not. It is a mini trial, often held in a boardroom, in which evidence is presented, including the contract and agreement terms and conditions that have been previously agreed to by all parties.

Arbitration can be binding or non-binding. A binding arbitration is one in which the ruling of the arbitrator(s) is final, and the decision is to be accepted by the parties. Non-binding arbitration goes through the same mini trial procedure, but the ruling of the arbitrator(s) does not eliminate the losing party's right to go to court to have the case decided by a judge.

Mediation

Involves the use of a neutral party to assist in bringing about a voluntary resolution of a dispute. The mediator does not decide the case. Instead, the mediator tries to find common ground in a dispute and encourages both sides to reach that common ground. Any resolution from mediation is binding on the parties.

What points should be considered when negotiating ADR?

- ! Decide on a procedure for appointing a mediator or arbitrator(s).
- ! Determine the duty of the arbitrator or mediator.
- ! Decide which matters will be referred to arbitration or mediation.
- ! Decide how one party serves notice to another party on the commencement of arbitration or mediation.
- ! Decide how costs of arbitration or mediation will be dealt with. Will both parties be responsible for their own legal expenses and for an equal share of the expenses of the arbitrator or mediator? Or, in arbitration will the arbitrator(s) be given authority to deal with these costs in their ruling?

APPENDIX A- PRINCIPLES AND RULES OF TENDERING

What are the key principles and obligations in government competitive tendering?

The Ontario Government's procurement directives require that ministries use a geographically neutral, competitive process when buying supplies, equipment and services. This means that out-of-province companies compete on the same level as Ontario companies.

Duty of Full Disclosure

It is critical that the RFP contain sufficient and complete information so that a bidder can decide if they wish to submit a proposal or determine which way to structure or price its proposal. This can include technical information or any known dangers or risks.

Duty of Fair & Equal Treatment

All bidders must be treated fairly and equally in the tendering process. All bidders are to be evaluated fairly according to the same criteria and process; no one bidder is to be given special advantage or considerations not extended to other bidders; and all bidders have the equal chance of being selected.

What are some important rules of tendering?

Do not accept unsigned proposals

Proposals are legal documents when properly endorsed. Only accept signed proposals from staff able to bind the bidder.

Do not accept late proposals

The closing date and time should be published in the RFP, so no bidder has a special advantage.

Do not accept changes to proposals after closing

Do not accept changes to proposals after the closing date and time, unless the RFP specifically allows for such (e.g. all short listed bidders may be allowed to conduct due diligence testing and prepare a best and final offer).

Negotiating certain elements of a proposal with short listed bidders is acceptable if the RFP lays out the process to be followed (e.g. negotiation process for transfer of assets, facilities, or staff).

APPENDIX A- PRINCIPLES AND RULES OF TENDERING

Do not discuss any proposals with other bidders

The information in proposals should be kept confidential and not discussed with any other bidder. Also, the proposals themselves should be kept under lock and key, and should not be distributed to staff members who are not involved with the evaluation process.

Do not apply undisclosed criteria

When proposals are evaluated, apply only the evaluation criteria listed in the RFP. Use all stated evaluation criteria and do not apply any undisclosed criteria, or disqualify proposals for failing to satisfy undisclosed requirements.

Do not award a contract for something that is significantly different from what is requested

Negotiating minor changes with the successful bidder after the award is possible, but such negotiations cannot be used to obtain something that is significantly different from what was called for in the RFP. In some cases, however, the RFP may specifically provide for post-award negotiations of substantive items (e.g. CPP).

Do not discard any evaluation or scoring material

Written score sheets and other records created by the evaluation team may be subject to disclosure under the Freedom of Information and Protection of Privacy Act. In addition, these records and the procurement process used in the award may be subject to audit.

APPENDIX B - DESIGNING THE RFP

What key questions should the RFP address?

What is the purpose or intent of the RFP?

- the ministry goals/objectives or desired results from the relationship

What is the scope of the program or service required?

- nature of the program or service to be provided (may need to clarify which services are not required)
- identify the users of the program or service
- the geographic area where the program or service are to be provided

Will there be multiple or single service providers?

- announce the ministry's preference either toward a single service provider or a number of service providers.

What specific details will be provided to bidders concerning availability of any ministry assets or personnel being transferred in the relationship?

- if government staff are to be transferred what information will be required and what is the process for making employment offers (seek advice from Legal & HR Branch concerning reasonable efforts);
- provide a detailed description of assets, property, and lease commitments;
- describe the process and conditions regarding the sale of assets/property - all bidders require an opportunity to view the property before the close of the RFP; and
- if government property is to be leased or rented to the bidder - a sample copy of lease documents need to be available in the RFP.

What background information will be required by bidders?

- ministry and corporate directives (e.g. Conflict of Interest⁸, FOI);
- technical data and specifications;
- historical usage volumes, projected volumes or budget history;
- user information and geographic distribution;
- tax status, payment mechanisms, hours of operation, etc.; and
- environmental or known dangers.

⁸ MBC Directive - Conflict of Interest

APPENDIX B - DESIGNING THE RFP

What are the required qualifications of bidders?

- the minimum qualifications that the bidder must possess to be eligible to submit proposals (e.g. licences, CSA approval, etc.); and
- bidders who do not meet these qualifications will have their proposals returned.

What evidence will be asked from the bidder to demonstrate its capabilities, capacity and commitment to deliver the program or service required?

- bidders should be able to identify critical success factors of the program or service and how they would be managed/attained;
- bidders should describe the specific contribution that senior management and other key staff can bring to the relationship;
- bidders should provide evidence of related experience in managing similar projects or programs of this nature;
- bidders should provide evidence of financial capability to handle this project (e.g. financial statements, letters of credit, etc.);
- bidders should describe facilities, systems, and infrastructure that demonstrate their ability to deliver the program or service;
- bidders should describe their commitment to quality and user satisfaction;
- bidder should address their contingency plans to ensure program or service delivery will continue in the event of a disaster, labour strike, etc.; and
- if a proposal is received from a consortium or joint venture, provide evidence on the structure of the relationship and their commitment to work with each other.

What accountability will be required of the successful bidder, and how will performance be monitored?

(see Section 4.1)

What risk management instruments will be required in the relationship?

(see Section 2.1)

What evaluation criteria will be used to evaluate and rate proposals?

- the methods of evaluating and rating must be outlined in the RFP; and
- a series of weighted criteria should be included in the RFP (e.g. quality, delivery, capabilities, price, etc.).

APPENDIX B - DESIGNING THE RFP

What pricing instructions will be given to bidders?

- the pricing structure the bidder must use in submitting unit prices is to be outlined in the RFP (see pricing options below);
- if delivery is required the bidder should quote prices to destination;
- discount and incentive payment terms should be quoted separately;
- prices should not include any PST & GST but should include excise taxes; and
- the structure of pricing valued added components (e.g. warranties, buy-back, financing rates) should be outlined for bidders.

There are essentially three types of pricing options available for the service manager to decide upon: fixed unit; modified fixed unit; and incentive-based.

Fixed unit pricing is by far the most common pricing option in government contracts. The unit pricing structure does not change over the term of the contract. The bidder accepts the associated risk (e.g. inflation, interest, input costs).

Modified fixed unit pricing is often referred to as variable unit. Price increases are allowed over the term of the contract provided that the prices are known in the proposal and are fixed, that is, predictable and expressed in maximum terms (e.g. price for buying at specific volume levels or price for year 1, year 2, etc.). These unit price increases cannot be indexed to any other factors (e.g. CPI Index).

Incentive-based pricing (see Section 2.2)

What will the term of the relationship be?

- the term of the contract will vary depending on the nature of the program or service to be provided and other factors, including up-front investment required by the selected service provider; and
- the term should be long enough to enable the service provider to recover its investment.

What negotiation process for establishing the working relationship can the successful bidders expect?

- a sample or pro-forma contract is usually included in the RFP; and
- a letter of intent is normally issued from the ministry prior to the contract signing, since negotiating the final contract including service level agreements and dispute resolution may take months. CPP negotiations will also include pricing.

APPENDIX C - RISK ASSESSMENT(SURETY BONDS AND LETTERS OF CREDIT)

What are surety bonds and how are they used?

Surety bonds are used primarily in construction or design and build type projects, where a bonding company guarantees the ministry that the service provider will fulfill contract obligations and pay its subcontractors.

The three main types of surety bonds are:

- ! **Bid Bonds** guarantee that the service provider will enter the contract at the predetermined price.
- ! **Performance Bonds** protect the ministry against financial loss should the service provider default or fail to perform the job according to the contract.
- ! **Payment Bonds** guarantee that the service provider will pay for the labour, materials, and certain subcontractors associated with the project.

With most standard performance bonds, the bonding company has several alternative methods of responding should the ministry declare that the service provider is in default of the contract.

The bonding company could:

- ! Step-in and finance the service provider or provide any support it needs to finish the project.
- ! Arrange for a new service provider to finish the project.
- ! Ask the ministry to award the remaining work to another service provider, with the bonding company agreeing to pick up any difference in cost.
- ! Pay the sum of the bond, if none of the previous alternatives are feasible.

What are letters of credit and how are they used?

Letters of credit are instruments issued by financial institutions such as a bank. They can be used in construction, design and build, or service type contracts to guarantee the service provider's performance. These letters of credit are often referred to as a "standby" letter of credit. They differ from performance bonds in that the bonding company has certain duties and responsibilities (outlined above) to both the service provider and ministry, while the financial institution's obligation is merely to pay the aggregate amount of the letter of credit to the ministry upon demand.

APPENDIX C - RISK ASSESSMENT(SURETY BONDS AND LETTERS OF CREDIT)

As opposed to a letter of credit, contracts may allow the service provider the option of a certified cheque payable to the ministry, which would be held or deposited in an escrow account, and upon satisfactory completion of the contract the funds would be returned.

The RFP must dictate the type of instrument required and disclose how they will be used in the evaluation and award process. For example:

- bidders must have them in place in order to qualify their proposals
- the provision of them will be evaluated as part of the desirable criteria
- the contract award can be made conditional on the provision of negotiated or pre-specified arrangements

What are the costs of surety bonds & letters of credit?

These arrangements cost the service provider money which is often recovered through their bid price or is a net cost for the losing bidders. For surety bonds it is estimated the cost is between 1% and 3% of the contract amount. The cost for letters of credit will depend upon the amount (does not have to be the value of the contract); the time period in which it will be held; and the service provider cost to borrow or use funds.

As such, these instruments may limit access and competition. Not all service providers are able to meet the surety pre-qualification standards set by bonding companies, and letters of credit can tie-up operating capital needed for other business projects.

APPENDIX D - RISK ASSESSMENT(ANALYSING FINANCIAL STATEMENTS)

How do you use financial statements to gauge the financial status of a bidder or a service provider?

Service managers can require financial statements prior to the contract award and throughout the life of the contract. The analysis of financial statements to gauge the financial status of a bidder or a service provider, requires evaluation and interpretation techniques which involve the following:

- ! Examining the auditor's report if the financial statements are audited. Of particular importance is the possibility that instead of an unqualified opinion, the auditor may give (a) a qualified opinion, (b) an adverse opinion, or © a disclaimer of opinion.
- ! Examining the entire financial statements, accompanying notes and supporting schedules. This is done to gain an overall perspective and to identify major strengths, weaknesses, and unusual changes such as; turning points in the trend of sales, earnings, assets structure, liabilities, capital structure and cash flow.
- ! Applying solvency analytical techniques, specifically the quick ratio and more importantly the current ratio measures. For comparison purposes generic industry ratios are available from most credit agencies.

- Quick (or acid test) ratio = $\frac{\text{Quick Assets}}{\text{Total Current liabilities}}$

Measures the ability to meet sudden and immediate creditor claims and obligations. Cash, accounts receivable, short term investments, and marketable securities represent funds which may be made readily available for paying these demands. Traditionally, some analysts have considered a quick ratio of 1 to 1 (rule of thumb standard) to be desirable.

- Current (or working capital) ratio = $\frac{\text{Total Current Assets}}{\text{Total Current Liabilities}}$

Measures the adequacy of working capital to meet current creditor claims plus current operating costs. Traditionally, some analysts have considered a current ratio of 2 to 1 (standard) to be desirable.

Caution should be exercised when using simplistic rule of thumb standards like the above, especially when they do not factor in the uniqueness of the industry in which the firm operates.

APPENDIX D - RISK ASSESSMENT(ANALYSING FINANCIAL STATEMENTS)

If the financial statements are not audited then search for information to supplement that provided by the financial statements. This could include credit bureau reports and letters of credit worthiness from the company's bank.

Using the above to gauge the financial status of an established medium sized business can be accomplished without many difficulties. However, this approach may be more difficult to apply to large conglomerates with consolidated financial statements; a joint venture or limited partnerships; financial statements expressed in a foreign currency; and new businesses or employee start-up businesses. For these cases it is advisable to consult with professional accountants.

APPENDIX E - MANAGING INFORMATION AND FRENCH LANGUAGE SERVICES

The following is a brief overview of legislation and corporate direction on managing information and French Language Services. The service manager should refer to the appropriate resource materials and consult with ministry staff for more information.

Freedom of Information and Protection of Privacy

The Freedom of Information and Protection of Privacy Act (FIPPA) gives the public a right of access to government records, subject to specific exemptions. The Act also provides for the protection of personal information by establishing fair practices for collecting, using and disclosing it.

Service management considerations:

- ! If the service provider is acting as an agent of the government, identify which legislative authority allows it to collect personal information on the government's behalf.

- ! Ensure that government retains control over the records. If custody of the records at times resides with the service provider, ensure that the contract outlines the FIPPA requirements and any recourse if the service provider does not live up to them.

- ! Address personal-privacy protection and/or the confidentiality of commercial information in the procurement documents.

FIPPA resources available:

- MBC Directive
- Freedom of Information and Protection of Privacy Act
- Freedom of Information (FOI) Manual
- Ministry FOI Co-ordinator

APPENDIX E - MANAGING INFORMATION AND FRENCH LANGUAGE SERVICES

Intellectual Property

The Management Board directive, Managing Intellectual Property applies to use of intellectual property (IP) in all ASD delivery options. While a service itself is not IP, all government information, records, data, publications, software, policies, management processes and other intangible assets used to provide the service are IP and are covered by this directive.

Service management considerations:

- ! The government owns the IP it creates, and should include contractual provisions with the service provider to acquire rights for all intellectual property created in delivering the programs or services.
- ! All arrangements with service providers that allow the use of government IP must be formalized in the contract or under a separate licensing agreement. Ensure that these agreements outline what rights the service provider acquires, specific usage requirements, and appropriate disclaimer clauses protecting the government from third party liability.
- ! Procurement documents should address government IP ownership, patents and copyright issues. Also, these documents should specify the service provider's management and security requirements for all records, documents and data.

Intellectual Property resources available:

- MBC Directive, Managing Intellectual Property; Management of Recorded Information
- Archives Act
- Public Access Services Branch, MBS

French Language Services

The French Language Services Act (FLSA) gives every person and corporate entity the right to communicate with and receive all available services from every ministry, agency, board and commission of the government, in the province's 23 designated areas in both French and English.

Service management considerations:

- ! If the program or service requires communications or contact with the public then the government is obligated to ensure that the contract with the service provider outlines the FLSA requirements and any recourse if the service provider does not live up to them.

APPENDIX E - MANAGING INFORMATION AND FRENCH LANGUAGE SERVICES

- ! The procurement documents should clearly state that the provision of services in French is mandatory in the designated areas of the province. They should also include reference to accountability mechanisms and performance measures.

- ! The FLSA gives the Minister responsible for Francophone Affairs the right to investigate public complaints about French language services, including those delivered by a service provider.

FLSA resources available:

- French Languages Services Act
- FLSA Guidelines
- Office of Francophone Affairs
- Ministry French Language Service Co-ordinator

APPENDIX F - SAMPLE SERVICE LEVEL AGREEMENT

ITSB Service Level Agreement

1. Purpose

This Service Level Agreement (SLA) details the conditions of the service contract between ITSB and its clients.

2. Roles and Responsibilities

ITSB will provide clients with a detailed list of its services, the service levels it is agreeing to provide and associated costs. IT services, service levels and costs are described in sections 2.0 and 3.0 of the "Services and IT Planning (SLA) Guide 1998-1999". ITSB will report on service usage to clients on a quarterly basis. These reports will outline services used, service levels achieved and associated costs. ITSB will use a call logging and management system to capture service level measures (e.g. response time, etc).

Clients, in turn, will estimate their use of information technology services and will assist ITSB in maintaining accurate and up to date data for their branch. Clients will advise ITSB of changes to their organization and its staff.

Clients must report problems and request changes through the ITSB Help Desk, this will ensure that all problems and requests will be logged in the call logging and management system. Clients must maintain desktop and software standards, and request that relocation and new equipment set-ups be done by ITSB.

3. Parties to the Contract

This contract is an agreement between ITSB and the Purchasing Services Branch, Services.

4. Effective Time Period

The SLA is effective for the period commencing on **April 01, 1998** and expiring on **March 31, 1999**.

5. Reporting

ITSB will document and provide data on the use of IT services for each branch in MBS/ORC. Reports on the use of IT services will be prepared on a quarterly basis, unless otherwise specified. The reports will also outline the costs of services used. Most of the costs are funded corporately and will not be charged back to clients. Some costs, however, have traditionally been paid for by clients and clients will be expected to pay for these costs. Each branch will estimate their service usage prior to the new fiscal year by completing the "IT Usage Assessment Form" within the SLA.

APPENDIX F - SAMPLE SERVICE LEVEL AGREEMENT

6. IT Usage Assessment Form CLIENT PAY

| One-Time Services | Rate | Unit | Cost |
|---|-----------------------|-------------|----------------|
| Several devices - Hardware/Software installations and moves | Negotiated | 0 | \$ 0.00 |
| Single device - Hardware/Software installations and moves | \$150 per device | 0 | \$ 0.00 |
| Training (cost is based on course type) | \$125/per course | 0 | \$ 0.00 |
| Recurring Services | Rate | Unit | Cost |
| Internet E-mail account | \$240/year per user | 0 | \$ 0.00 |
| Variable Services | Rate | Unit | Cost |
| Business Application - major development and enhancements | \$80/hr (on average) | 0 | \$ 0.00 |
| Network data and e-mail restores | \$75/yr (1st hr free) | 0 | \$ 0.00 |
| TOTAL | | | \$ 0.00 |

CORPORATELY FUNDED

| One-Time Services | Rate | Unit | Cost |
|---|---------------------|-------------|----------------|
| Set-up user with access to a business application | \$50 per set-up | 0 | \$ 0.00 |
| Central Fax: Transmission | \$500 per fax | 0 | \$ 0.00 |
| ITSB installs Dial-up software on PC for user | \$150 per set-up | 0 | \$ 0.00 |
| Set-up user on the network | \$50 per set-up | 0 | \$ 0.00 |
| Recurring Services | Rate | Unit | Cost |
| Business application access | \$200/yr per app | 0 | \$ 0.00 |
| Dial-up access | \$216/yr per user | 0 | \$ 0.00 |
| Internet access | \$216/yr per user | 0 | \$ 0.00 |
| Network account for GTA users | \$3,300/yr per user | 0 | \$ 0.00 |
| Network account for Regional users | \$2,200/yr per user | 0 | \$ 0.00 |
| Network account for Special users | \$800/yr per user | 0 | \$ 0.00 |
| Telephone management (GTA only) | \$55/yr per user | 0 | \$ 0.00 |
| Variable Services | Rate | Unit | Cost |
| Business applications: fixes/minor enhancements | \$80 (on average) | 0 | \$ 0.00 |
| Central Fax: destination site set-up | \$75/hr | 0 | \$ 0.00 |
| General consulting | \$80 (on average) | 0 | \$ 0.00 |
| Planning | \$80 (on average) | 0 | \$ 0.00 |
| TOTAL | | | \$ 0.00 |

APPENDIX F - SAMPLE SERVICE LEVEL AGREEMENT

7. Service Levels

| Category | Service Type | Target |
|---|---|---|
| Account set-ups | Network, Internet, Dial-up and Business Applications. | 90% of account set ups will be carried out within 2 days of receipt of completed request form from user. |
| Billing | Telephone | Clients will receive reports within 10 days of ITSB receiving data from CTS 100% of the time. And be billed |
| Central fax (site set-ups) | Central fax | 90% of account set ups will be carried out within 4 days of receipt of completed request form from user. |
| Consulting | Planning and General Consulting | Negotiated |
| Development and enhancements (minor & major) | Business Applications | Negotiated |
| Follow-ups | Network, Dial-up and Internet access | 90% of calls will have a follow-up call |
| Notification of network changes | Network and Business Application access | Users will be given 5 days notice for changes to the network 100% of the time |
| Problem resolution | Network, Dial-up, and Internet Access | 70% of calls resolved within 1 day |
| Server availability | Network, Internet and Business Applications | Individual servers available 97% of the time |
| Set-ups/deletions | Telephone (includes data lines and voice mail) | 90% of set-ups will be done within 8 days of receipt of request form |
| Several devices – installations & moves | Network (hardware and software) | Negotiated |
| Single device – installations and moves | Network (hardware and software) | 90% of installations and moves will be carried out within 5 days |
| Software installation | Dial-up | 90% of installs will be done within 5 days of receipt of request form |
| Training | Training | Negotiated |
| Transmission | Central Fax | 100% of transmissions will be done within 1 day from receipt of request |

8. Agreement

I hereby agree to the terms and conditions of this agreement;

Agreed and authorized by:

Agreed and authorized by:

Date:

Date:

SUBSIDIARY AGREEMENT TO THE

APPENDIX F - SAMPLE SERVICE LEVEL AGREEMENT

FORMS MANAGEMENT SERVICES CONTRACT

THIS AGREEMENT made in duplicate as of the 1st day of _____, 19 __. (**Commencement Date**)

BETWEEN:

The Ontario ministry/agency known as:

Name: _____

Address: _____

(hereinafter called the "**Forms Management Client**" or the "**Client**")

AND:

XXXXXXXXXXXXXXXXXXXX INC.

Address Line 1

City, Province Postal Code

(hereinafter called the "**Supplier**")

Preamble

It is a principal objective of the Forms Management Services Contract that Clients will be able to reduce the production costs of their forms by utilizing the Services. It is also intended that Clients will improve both their forms and performance of their core businesses by availing themselves of the Services. Clients who agree to acquire all Forms Management Services from the Supplier will derive the maximum benefits outlined in the Corporate Contract or as otherwise negotiated and specified in the Subsidiary Agreement.

This Subsidiary Agreement shall indicate the extent of the Services that the Forms Management Client requires from the Supplier based on the Scope of Services described in the Contract.

The Supplier shall work closely with each Forms Management Client to set objectives for the Forms Management Services; to measure the Supplier's performance against those objectives and to regularly report and review performance results with the Forms Management Client, as part of the Supplier's obligations under the Subsidiary Agreement.

One of the key features of the Contract is the Supplier's commitment to achieve Savings in forms administration by reducing, among other things, the costs to Forms Management Clients of acquiring, managing, distributing and paying for forms and for processing forms. Savings, which in any case are to be in excess of the "Committed Savings" as outlined in the Contract and as stated below, are to be agreed to by the Supplier and Forms Management Client and are to be specified in this Subsidiary Agreement.

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1 **Applicable Terms & Conditions from the Contract**

1.1 All terms and conditions, mutual promises and obligations of the Forms Management Services Contract (“**the Contract**”) between Her Majesty the Queen in right of Ontario, as represented by the Chair of the Management Board of Cabinet and Crain-Drummond Inc., dated December 1, 1996, shall apply to this Subsidiary Agreement, except where the Contract provides for: the description of the specific Service needs of the Forms Management Client based on the Scope of Services of the Contract; the Savings objectives to be negotiated with the Forms Management Client where such Savings are expected to exceed the Committed Savings of the Contract, the calculation of the Distribution Fee and any other matters required to be included in accordance with the Contract, as set out herein.

1.2 **Term of the Contract with MBS**

1.2.1 The term of the Contract with MBS is five (5) years; with an optional extension Term of two (2) terms having a duration of one year each, exercisable at the discretion of MBS.

1.3 **Definitions**

1.3.1 Unless otherwise provided, capitalized words and phrases have the prescribed meaning as set out in Appendix 1 to this Subsidiary Agreement or in the Contract.

1.4 **Subsidiary Agreement Term**

1.4.1 The Term of this Subsidiary Agreement shall be ___ years from the Commencement Date indicated above.

1.5 **Implementation Plan**

1.5.1 The Supplier shall prepare an Implementation Plan which shall include actions, responsibilities and time-frames for the Supplier to implement the Services of the Subsidiary Agreement.

1.5.2 The Implementation Plan shall include Base lining which shall be the basis for calculating Savings. Savings shall be comprised of the following categories: product costs; administration costs; form processing costs; and such other categories as the Supplier and Forms Management Client may agree, and the amount of the Savings shall not be less than the costs savings commitments described in Section 5.1 of this Subsidiary Agreement.

1.5.3 In implementing the Subsidiary Agreement the Supplier shall meet with the Forms Management Client to define and benchmark the performance criteria and standards (objectives) expected of the Supplier in providing the Services; and the measurement methods to be used by the Supplier to monitor and report on its performance.

1.5.4 **Contacts for the Supplier:**

Primary: _____

Telephone No.: (905)_____ (Ext._____)

Facsimile No.: (905)_____

Backup: _____

Telephone No.: (905) _____

Facsimile No.: (905) _____

1.5.5 Contacts for the Forms Management Client

Primary: _____

Telephone No.: (____) _____

Facsimile No.: (____) _____

Backup: _____

Telephone No.: (____) _____

Facsimile No.: (____) _____

2 Services Required by the Client

2.1 In the space provided below, the Client in conjunction with the Supplier shall describe the specific group of Forms Management Services that the Forms Management Client requires the Supplier to provide under this Subsidiary Agreement: *(Attach additional sheets if required)*

2.2 **Distribution Fee:** For the first six months of this Subsidiary Agreement the Distribution Fee (if any) is _____.

2.3 Order Form

2.3.1 The Supplier shall provide to the Client, custom paper and/or standard electronic order forms for the purposes of ordering the Services.

2.4 Ordering Options

2.4.1 The Supplier shall make available to the Forms Management Client, any or all of the following methods of ordering the Services of the Subsidiary Agreement:

- Internet;
- E-Mail;
- EDI - Electronic Data Interchange;
- IVR - Interactive Voice Response (telephone); and
- FAX

3 Scope of Services Available

3.1 Except as otherwise indicated, all of the Services described in Sections 3 & 4 of this Subsidiary Agreement are included in the price of the Goods purchased by the Forms Management Client from the Supplier.

3.2 Forms Analysis

3.2.1 The Supplier shall provide ongoing consultation, forms analysis and design Services to the Forms Management Client, to reduce the Client's costs of its forms and to achieve and exceed Processing Savings. The Supplier shall propose and implement, through the applicable Forms Committee, innovative cost saving solutions by applying techniques to reduce and simplify the Client's paperwork.

3.2.2 The Forms Management Client may also request the Supplier, through the applicable Forms Committee, to attend to any of the above mentioned Forms Management Services.

3.2.3 In any case, Forms Management Services are to be provided on the understanding that any resulting form will be manufactured and/or supplied by the Supplier.

3.2.4 The Supplier shall allocate personnel with sufficient analytical resources required for the forms analysis needs of the Forms Management Client.

3.3 Forms Design

3.3.1 The Supplier shall provide all paper based forms design services and finished artwork, provided that the Supplier will be the manufacturer of the particular form.

3.3.2 All forms design work shall be effected by the Supplier in close liaison with the applicable Forms Custodian and Forms Committee and may include any or all of the following: the Supplier's sketches, pen and ink drawings and/or computer generated designs.

3.3.3 Form designs shall be effected in accordance with all Requirements of Law and government policies, including MBS' Visual Identity Policy, Plain Language Policy, and Canada Post Standards.

3.4 **Cataloguing & Combining of Non-Registered Forms**

3.4.1 During implementation, the Supplier shall in cooperation with the appropriate Forms Custodian or Forms Committee, collect and catalogue all recognized non-registered forms; prepare a database, conduct fact finding and on an ongoing basis, explore opportunities for form combination.

3.5 **Elimination of Redundant Corporate Forms**

3.5.1 The Supplier shall, in cooperation with the applicable Forms Committee and with MBS, use its best efforts to identify, catalogue and eliminate redundant forms of a Forms Management Client by actively recommending the consolidation of similar forms serving the same or similar purpose.

3.6 **Forms Obsolescence**

3.6.1 The Client shall be responsible for the cost of obsolescence of any form which is pre-authorized for production by the Forms Custodian, when the form is declared obsolete. The Supplier shall be responsible for the cost of obsolescence of all forms not authorized by the Forms Management Client for production.

3.6.2 The Supplier shall implement appropriate inventory planning and supply management procedures to ensure that forms obsolescence and inventory costs are kept to a minimum.

4 **Supply Management**

4.1 **Inventory Transfer**

4.1.1 If required by the Forms Management Client, the Supplier shall implement its action plan to transfer the Client's current inventory of forms to the Supplier's warehouse.

4.1.2 Prior to the transfer of the Client's forms to the Supplier, the Client shall count and record the inventory of each form. The Client shall be responsible for the costs to ship the forms to the Supplier's warehouse.

4.1.3 Upon receipt of the forms, the Supplier shall verify the inventory count in conjunction with the Forms Custodian or Forms Committee or their respective delegates. The Supplier shall, within 30 days from the date of receipt of the forms, issue a credit to the Client for the value of the inventory that is transferred from the Client to the Supplier.

4.2 **Forms Printing/Supply**

4.2.1 The Supplier shall print and manufacture and/or purchase from the Subcontractors the forms as required by the Client.

4.2.2 All forms shall be supplied on paper which meets or exceeds the Environmental Choice Program (ECP) guidelines for recycled fine papers as published by Environment Canada.

4.3 **Reprint Procedures**

4.3.1 The Supplier shall on a regular basis, meet with the Forms Custodian to review the needs of the Forms Management Client, including identifying mission critical forms, forms design, processing efficiency and supply requirements. Mission critical forms are to be identified by the Client with the

Supplier. These may include items which have operational impact and/or are revenue generating forms.

4.3.2 As part of the Supplier's diligent supply management procedures, the Supplier shall obtain an authorization signature from the appropriate Forms Custodian or designate, to reprint a form for inventory replenishment purposes. Alternatively, the Supplier and the Client may choose to negotiate a reprint approval process and time frame more appropriate to the specific requirements of the Client.

4.3.3 The Forms Custodian or designate shall work with the Supplier to provide approvals within the mutually agreed time frame. Late approvals may impact delivery requirements outlined below.

4.4 **Delivery Requirements**

4.4.1 For forms not requiring any changes: two (2) Business Days delivery turn around from receipt of order by the Supplier to locations within Geographic Service Areas "C" and "A" (as defined below).

4.4.2 For forms not requiring any changes: three (3) Business Days delivery turn around from receipt of order to locations within Geographic Service Area "B" (as defined below).

4.4.3 New or changed forms shall be delivered as follows:

(A) Flat Forms: within five (5) Business Days from the Supplier's receipt of the approved proof from the Forms Custodian; and

(B) Single and multi-part continuous, multi-part snap-set forms & envelopes: within 15 Business Days from the Supplier's receipt of the approved proof from the Forms Custodian, or as negotiated in advance between the Client and the Supplier.

4.4.4 FOB destination; Freight prepaid and charged back to the Client, either through the Distribution Fee or as otherwise arranged with the Client and specified in this Subsidiary Agreement.

4.5 **Geographic Service Areas**

4.5.1 The Supplier shall provide any of the Services to all of the Geographic Service Areas as defined below.

| GEOGRAPHIC SERVICE AREA | REGION OF ONTARIO |
|--------------------------------|--------------------------|
| "A" | North Central Ontario |
| "B" | North Western Ontario |
| "C" | Southern Ontario |

4.6 **Proofs**

4.6.1 The Supplier shall provide to the Client one final set of factory proofs made to industry standard based on Client approved original copy. Changes to proofs made by the Client as the result of "author's alterations" are to be charged as an extra at \$40.00 per hour multiplied by the Supplier's production time for making such changes to the proofs.

5 Committed Savings

5.1 After Baseline has been completed, the Supplier shall commit to the following *minimum savings*:

1. 9% on Product Cost from Baseline;
2. 20% on Administrative Cost from Baseline; and
3. 1% on Processing Savings.

5.2 Where Savings (which are to exceed the above minimums) are negotiated with the Client, such Savings shall be specified below and are subject to the Performance Review:

1. _____ % on Product Cost from Baseline;
2. _____ % on Administrative Cost from Baseline; and
3. _____ % on Processing Savings.

6 Additional Savings

6.1 As part of the Services, the Supplier shall actively pursue new cost savings projects and present cost reduction proposals to the Forms Committee in order to meet and exceed Savings including Processing Savings as specified in Section 5.1 or 5.2.

6.2 Additional Savings shall be shared equally between the Client and the Supplier.

7 Pricing

7.1 The pricing of the Services to be provided by the Supplier shall be based on the Cost Plus Pricing methodology.

7.2 Cost Plus pricing incorporates the following principles:

7.2.1 Pricing is to be based on compensating the Supplier on a cost plus basis;

7.2.2 The Client shall have allocated to it, the costs incurred by the Supplier to provide the Services set out in the Subsidiary Agreement or Purchase Order as the case may be; and

7.2.3 The allocation of such costs is divided between the following categories:

- Manufactured Products;
- Resale Items;
- Handling Only Products; and
- Warehousing and Distribution.

7.3 Manufactured Items

7.3.1 The Forms Management Client shall pay the Supplier for each Manufactured Item ordered pursuant to this Subsidiary Agreement:

- (A) the Manufacturing Cost;
- (B) plus the Administrative Fee of 13.3% of the Manufacturing Cost;
- (C) plus a Mark-Up of 9.85% of the Manufacturing Cost;
- (D) plus a Distribution Fee of X%** on the sum of sub-clauses (A), (B) & (C).

7.4 Resale Items

- 7.4.1 The Client shall pay the Supplier for each Resale Item ordered pursuant to this Subsidiary Agreement:
- (A) the Purchase Price;
 - (B) plus the Administrative Fee of 4% of the Purchase Price;
 - (C) plus a Mark-Up of 6% of the Purchase Price;
 - (D) plus a Distribution Fee of X%** on the sum of sub-clauses (A), (B) & (C).

7.5 Handling Only Product

- 7.5.1 The Client shall pay the Supplier for each ordered item that is a Handling Only Product a Distribution Fee of X%** of the purchase price paid by the Client for that item. The Client shall provide evidence of the purchase prices to the Supplier as required.

** Distribution Fee may vary with each Client and will cover the actual and direct costs incurred by the Supplier for the Services (see Article 2.2).

7.6 Warehousing and Distribution Activities

- 7.6.1 The Client shall pay the Supplier a Distribution Fee to cover the Supplier's direct and actual Distribution Costs for providing the Services required by the Client.
- 7.6.2 The rate of the Distribution Fee established within this Subsidiary Agreement shall remain fixed for a period of 6 months from the Commencement Date of the Subsidiary Agreement. Every 6 months thereafter, the rate of the Distribution Fee may be increased or decreased, as the case may be, and calculated in accordance with the method described in Contract Schedule # 2 of the Contract with MBS.

8 Reports

- 8.1 **Forms Management Clients' Reports:** These reports are to be provided monthly or periodically at such intervals as stated here _____, as a Microsoft Excel (Windows), LOTUS 123 file (or hard-copy if requested) or in a mutually agreed format, and may include but not be limited to the following:

- Detailed Forms Usage catalogue;
- Cost allocation as required;
- Grouping analysis;
- Slow Moving Report;
- Distribution Fee analysis;
- Cost Plus reporting;
- Client/customer satisfaction; and
- Summary of Savings.

9 Performance Review

- 9.1 The Supplier shall monitor and review the performance of the Services on an ongoing basis to ensure that the objectives set out in this Subsidiary Agreement are measured and met. At least once every 12 months during the Term, the Supplier shall make a performance review presentation, with appropriate documentation, to the Forms Management Client and a summary review presentation to MBS of the Forms Management Services performed that year.

9.2 The performance review presentations shall included the following:

- **Objectives review;**
- **Quality Standards Review ;**
- **Non Registered Forms Catalogue/Redundant Forms;**
- **Technology;**
- **Summary of Savings.**

10 Terms & Conditions

10.1 Taxes

10.1.1 Unless this Subsidiary Agreement (or the applicable Purchase Order) provides otherwise, GST is not applicable to the Services purchased hereunder, and the Client certifies that the Services purchased hereunder are for the Crown in Right of Ontario and as such are not subject to GST. Where GST is applicable, the Client shall so advise the Supplier, and GST is to be shown separately on the Supplier's invoices.

10.1.2 All prices are to exclude Provincial Retail Sales Tax (PST) which tax (or similar tax) will be added separately on the Supplier's invoices, and will be payable by the Client to the Supplier.

10.1.3 When applicable, taxes shall be identified and shown as separate items on each invoice, at the rates in effect at the time when the Client requests the Service from the Supplier.

11 Invoicing & Payment

11.1 The Client has the option of initiating the method of payment by using the Ontario government Purchasing Card when placing the order with the Supplier.

11.2 **Twice Monthly/Monthly Summarized Invoices** - Approved invoices are payable on a net 30-day basis from the date of receipt of invoice. Invoices that are not submitted in accordance with the prices or in accordance with instructions set out in the Purchase Orders, will be referred to the Supplier for adjustments. The Supplier shall apply the required adjustments to the next period billing and the Client shall pay the amount set out in such invoice, on a without prejudice basis as soon as practicable.

11.3 Alternative Methods of Billing

11.3.1 If required by the Client, the Supplier and Client are to agree as to an alternative method of billing, as provided in the Contract, which can be one of the following three methods:

- (a) **Itemized Billing;**
- (b) **Individual Invoices for Each Shipment;** Invoices that have been approved by the Client are payable on a net 30-day basis from the date of receipt of invoice. Invoices that are not approved by the Client shall be returned to the Supplier within five (5) Business Days of receipt by the Client, for correction/credit or credit to the Client, without the Client incurring any late payment penalties.
- (c) **Electronic Invoicing;** In this case, the Supplier shall arrange with individual Client to provide the Client with electronic invoicing, as required by the Client, to reduce the

respective administrative costs to both parties of preparing, submitting, processing and paying for paper based invoices.

12 Settlement of Disputes

12.1 In the event of any dispute or claim arising between the Supplier and the Client as to their respective rights and obligations under a Subsidiary Agreement or Purchase Order, either party hereto may give the other written notification of such dispute or claim. The notification of dispute or claim shall be made within five (5) Business Days of the dispute or cause of action arising. If the dispute or claim cannot be resolved to the satisfaction of both parties, the matter shall be referred to a meeting of the Forms Committee, and if the matter is not resolved within five (5) days thereafter, either the Client or the Supplier may refer the dispute to the Management Committee to resolve such dispute in accordance with Article 19 of the Contract.

13 Client's Right to Terminate Subsidiary Agreement or Purchase Order

13.1 The Client reserves the right to terminate the Subsidiary Agreement or Purchase Order, as the case may be, upon giving seven (7) days written notice to the Supplier in the event of the Supplier:

13.1.1 neglecting or failing to carry out the Services properly or diligently and in accordance with the Subsidiary Agreement or Purchase Order;

13.1.2 refusing or failing to supply an adequate number of properly skilled workers or an adequate amount of supplies; or

13.1.3 disregarding pertinent laws, regulations, by-laws or ordinances or the pertinent instructions of the Forms Custodian, and the Supplier failing to rectify or correct any such default or delay as required by the said notice within the time so specified.

13.2 The Client shall have the right to terminate the Subsidiary Agreement or Purchase Order, as the case may be, without cause, upon sixty (60) days' prior written notice to the Supplier.

14 Conflict Between Subsidiary Agreement & Contract

14.1 In the event that there is conflict between a provision of the Contract and Subsidiary Agreement or Purchase Order as the case may be, the relevant provision of the Contract shall prevail.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

Name of Ministry/Agency

Authorized Signature Per: _____

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Per: _____

I have authority to bind the Corporation.

1 Definitions

- 1.1 **“Additional Savings”** means the amount by which the Savings achieved by the Supplier exceeds the Committed or Negotiated Savings. The Additional Savings are to be shared between the Supplier and the Forms Management Client in accordance with the provisions of Section 4.17 of Contract Schedule #1;
- 1.2 **“Administration Fee”** means the fee that the Client shall pay to the Supplier to cover as compensation the Supplier’s Sales, General and Administrative costs of providing the Services, such fee to be allocated to the Client and calculated in accordance with the Contract;
- 1.3 **“Base lining”** means the process to be undertaken by the Supplier, in consultation with each Forms Management Client, on the Commencement Date of each Subsidiary Agreement. Through Base lining, the costs of the forms currently used by the Forms Management Client as of the Commencement Date of the Subsidiary Agreement are to be analysed and calculated to arrive at the baseline costs (“Baseline Costs”), and may include the actual costs of the forms currently used by the Forms Management Client (as of the Commencement Date of the Subsidiary Agreement), such costs to include the purchase price of the forms; the administrative costs of the Forms Management Client in requisitioning, ordering, distributing and financing the costs of the forms; and the costs of processing the forms. Where costs of the forms have not been actually incurred by the Forms Management Client, or where incurred costs are not all of the costs for the forms, the Supplier and Forms Management Client may agree either to attribute a cost therefor or to increase the cost therefor.
- 1.4 **“Committed Savings”** means the minimum savings the Supplier commits to provide as indicated in Section 5.1 of this Subsidiary Agreement;
- 1.5 **“Cost Plus Pricing Methodology”** means the method of calculating the Contract Price of the Goods by adding to the Manufacturing Costs, the Supplier's Administrative Costs, Customer Service & Support markup and a Profit Markup as specified;
- 1.6 **“Distribution Costs”** means the costs of the Supplier in distributing the Goods, and are comprised of the following costs: Warehousing, Packaging & Handling, Order Processing, Financing, Contract Management, Communications & Systems and costs related to Purchasing Card service charges and Early Payment Discount, which the Forms Management Client and the Supplier agree will likely be required for the Forms Management Services, in accordance with Contract with MBS;
- 1.7 **“Distribution Fee”** means the rate, to be calculated as a ratio of total estimated Distribution Costs to the anticipated Billings for the subsequent year for that Forms Management Client. The Distribution Fee to be charged to the Forms Management Client by the Supplier as a percentage of the Cost of the Form to recover the Supplier’s Distribution Costs;
- 1.8 **“Financing”** means the cost to the Supplier for keeping an inventory in a warehouse. It is based on the actual prime rate and the average value of the inventory warehoused for the Client;
- 1.9 **“Forms Committee”** means the group consisting of individuals of the particular Client’s forms management staff and the Supplier’s representatives, whose functions include setting objectives for the Forms Management Services; establishing good communications between MBS, the Supplier and the particular Forms Management Client; maximizing the effectiveness of the Services; and reducing administrative and processing costs of the Client;

- 1.10** “**Forms Custodian**” means any employee of the Client, whose responsibilities include keeping specific forms of the Client current and up-to-date. The Forms Custodian is to specify any changes required to be made by the Supplier to the forms of the Client, and is the delegated authority of the Client who can authorize the Supplier to produce or reprint specific forms for the particular Client;
- 1.11** “**Forms Management Client**” means any Client who enters into a Subsidiary Agreement with the Supplier for Form Management Services;
- 1.12** “**Forms Management Services**” means those particular Services that the Supplier is to provide the particular Forms Management Client, to be described in the particular Subsidiary Agreement between the Supplier and Forms Management Client;
- 1.13** “**Goods**” means any or all of the Manufactured Products, Resale Items and the Handling Only Products that the Supplier provides to the Client;
- 1.14** “**Handling Only Products**” means the Client owned goods which are provided to the Supplier for the purposes of the Supplier providing only the distribution component of the Services;
- 1.15** “**Implementation Plan**” means the schedule to be established and agreed to by the Forms Management Client and the Supplier, on or after the Commencement Date of the particular Subsidiary Agreement. The Implementation Plan is to include actions, responsibilities and time-frames by which the Supplier is to implement the Forms Management Services;
- 1.16** “**Implementation Team**” means the group of individuals representing the Forms Management Client and the Supplier respectively, who have the appropriate skills required to carry out the Implementation Plan.
- 1.17** “**Management Committee**” means the committee comprised of the Minister’s Representative and the primary contact of the Supplier. The functions of the Management Committee include MBS and the Supplier, coordinating the provision of Forms Management Services to the Client, and handling any dispute referred to the Management Committee pursuant to Article 19.
- 1.18** “**Manufacturing Cost**” means the cost to the Supplier of producing a Manufactured Item, including direct labour, direct materials, plant overhead and depreciation, and where applicable, the freight cost to get the Goods to the Supplier’s warehouse;
- 1.19** “**Manufactured Products**” means the goods that the Supplier has produced as required by the Subsidiary Agreement;
- 1.20** “**Mark-Up**” means the fee, as specified in the Contract, that the Client shall pay the Supplier as the Supplier’s profit for providing the Goods/Services;
- 1.21** “**Minister**” or “**MBS**” means “Her Majesty the Queen in Right of Ontario as represented by the Chair of the Management Board of Cabinet” on behalf of the Ministries, Schedule 1 Agencies and the Broader Public Sector (BPS);
- 1.22** “**Processing Savings**” means that part of Savings, the amount for which to be specified in the Subsidiary Agreement, to be realized by the Forms Management Client by having some or all of its

forms redesigned or modified, to take into consideration recommendations made by the Supplier and accepted by the Forms Management Client, whereby the Supplier has applied its skill and knowledge of forms analysis;

- 1.23** **“Purchase Price”** means the price paid by the Supplier to a Subcontractor as agreed to by the Client for a Resale Item; this may include the cost of freight to the Supplier’s warehouse when applicable;
- 1.24** **“Resale Items”** means goods that the Supplier has purchased in order to provide the Services required by the Subsidiary Agreement;
- 1.25** **“Savings”** means the reduction in the amount of Baseline Costs, to be achieved by the Supplier for the particular Forms Management Client through the performance by the Supplier of the Forms Management Services. The amount of the Savings are to be as indicated in Section 5.1 as “Committed Savings” or as “Negotiated Savings” as described and specified in Section 5.2 of this Subsidiary Agreement.