

August 2017

AN AUDIT OF THE CONTRACT FOR THE FAMILY
MAINTENANCE ENFORCEMENT PROGRAM

www.bcauditor.com



OFFICE OF THE
Auditor General
of British Columbia

CONTENTS

<i>Auditor General's comments</i>	3
<i>Report highlights</i>	5
<i>Summary</i>	6
<i>Summary of recommendations</i>	8
<i>Response from the Ministry of Justice</i>	9
<i>Background</i>	11
<i>FMEP contract history: 1988 – 2016</i>	11
<i>Procurement and contract management</i>	16
<i>Audit objective and scope</i>	21
<i>Audit objective</i>	21
<i>Criteria and sources</i>	22
<i>Audit scope and approach</i>	22
<i>Audit conclusion</i>	23
<i>Key findings and recommendations</i>	24
<i>Generally complied with policy</i>	24
<i>Procurement strategy was inadequate</i>	26
<i>Contract design was inadequate</i>	30
<i>Ineffective management of contract risks</i>	33
<i>What contributed to the contract challenges?</i>	35
<i>Learning from this audit</i>	38
<i>Appendix A: The legal environment for public sector procurement</i>	40

623 Fort Street
Victoria, British Columbia
Canada V8W 1G1
P: 250.419.6100
F: 250.387.1230
www.bcauditor.com

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

I have the honour to transmit to the Speaker of the Legislative Assembly of British Columbia the report *An Audit of the Contract for the Family Maintenance Enforcement Program*.

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



Carol Bellringer, FCPA, FCA
Auditor General
Victoria, B.C.
August 2017

cc: Craig James, Clerk of the Legislative Assembly

AUDITOR GENERAL'S COMMENTS

BRITISH COLUMBIA'S FAMILY Maintenance Enforcement Program (FMEP) monitors and enforces child or spousal support payments. The program has helped people receive the support payments that they're entitled to under a family maintenance order or agreement. In 2015/16, \$215 million was paid out to the 41,500 families enrolled in this voluntary program.

The FMEP was established in 1988, with government contracting out program delivery. B.C. is the only jurisdiction in Canada where this service is outsourced. The first contract was awarded to a company set up by a government employee who had run the pilot program. The same company continues to provide the services of the FMEP today. Over the last 10 years, government has paid about \$160 million to this company to deliver the program.

Our audit focused on the Ministry of Justice's management of the FMEP contract, and did not include examining the program or the quality of service provided. This audit follows a number of other external assessments, since the late 1990s, that have recommended improvements to the ministry's contract management practices.

The contract was most recently up for tender in 2006. The Justice Services Branch complied with the requirements of government's procurement policy. But the branch did not follow good procurement practices and could not demonstrate that it had achieved best value during the procurement. Good practices would have supported:

- ◆ choosing the right procurement strategy to understand the market of potential vendors
- ◆ ensuring a level playing field for all potential bidders
- ◆ generating competition for the opportunity or responding appropriately to the lack of competition



CAROL BELLRINGER, FCPA, FCA
Auditor General

AUDITOR GENERAL'S COMMENTS

We also found examples of several contract management challenges that should have triggered greater oversight by the ministry:

- ◆ During the 29 years of the FMEP, multiple procurements have failed to generate competition.
- ◆ Ten years of negotiations, with the service provider who has had the contract since 1988, still couldn't result in a new contract being reached.
- ◆ A history of the program regularly requesting, and being approved for, additional annual funding to cover cost pressures.

This audit shows that ministries have to do more than simply follow the requirements of government's procurement policies. Although the ministry's procurement choices were within policy, they did not generate competition, and the design and management of the contract did not mitigate the known risks. The ministry can't demonstrate that it has achieved best value for taxpayer money.

We made five recommendations to the Ministry of Justice to support improved procurement and contract management. Although this audit only looked at one contract, the lessons learned may have broader application. There is an opportunity for the Office of the Comptroller General to consider whether the audit findings may be relevant to other contracts, and whether additional procurement guidance would help all ministries.

I'd like to thank the ministry for its co-operation during this audit.



Carol Bellringer FCPA, FCA
Auditor General
Victoria, B.C.
August 2017

REPORT HIGHLIGHTS

FMEP
established in
1988

GOVERNMENT
PAID

\$18 million

to contractor in 2015/16
(\$160 million since 2006)

**SAME
COMPANY**

has had contract for

29 years



**41,500
FAMILIES**
in program
(2015/16)



Last time contract
was advertised was

2006

Branch chose ineffective
procurement strategy

Unable to generate
competition

Can't agree to new
contract even after
10 years of negotiation

**CHALLENGES
MANAGING
CONTRACT**

should have

TRIGGERED GREATER
MINISTRY OVERSIGHT



PROGRAM
PROCESSED
**\$210
million**

in support payments
(2015/16)

SUMMARY

THE FAMILY MAINTENANCE Enforcement Program (FMEP) works to ensure families (who choose to enroll in the program) receive the money they are entitled to under a maintenance order or agreement. In 2015/16, the program collected \$215 million on behalf of the 41,500 families enrolled.

Government has outsourced the FMEP's administration since the program began in 1988. The first contract was awarded to a company set up by a government employee, who had run the initial pilot maintenance enforcement program. The same company, through several procurements, has continued to deliver the FMEP. This outsourcing was part of a broader government initiative to privatize public services and offer incentives to encourage government employees to bid on contracts.

We did this audit to determine whether the Ministry of Justice (ministry) procured and managed the FMEP contract in accordance with government policy and guidance to achieve best value for money. We looked at the 2006 procurement and contract management practices from 2008 to 2016. We did not examine the quality of the services delivered under the contract, or the value of the services to the spouses and children who receive payments via the FMEP.

Government procurement policy and guidance are designed to help ministries achieve best value through their procurements and contracts. By procuring services in a way that complies with policy and is consistent with guidance, ministries are able to demonstrate they have taken steps to achieve best value. Complying with policy is not an assurance of best value. But the risk of not achieving best value is much higher when policy and guidance are not followed.

With a few exceptions, we concluded that the ministry procured and managed the FMEP contract in compliance with government policy. However, the ministry's procurement choices were not consistent with government guidance and did not achieve the procurement principle of competition. The design of the contract and the ministry's contract management practices neither mitigated known risks, nor enabled the ministry to demonstrate achievement of best value for money.

For the 2006 procurement, we found the ministry did not choose a procurement strategy that was likely to generate competition. The approach taken resulted in only one vendor responding. The ministry then decided to directly award the contract to that one vendor. This finding is important because competition promotes fair and equitable access to government contracts, enables the ministry to demonstrate that the fees it pays are competitive, and ultimately, supports government to achieve best value for money.

Although the 2006 procurement was intended to result in a new contract that would start in 2008, the ministry and service provider have not successfully concluded contract negotiations. As a result, the 2002 contract has been extended through 48 modification agreements over the last 10 years. We found that the contract in place between the ministry and the service provider did not include all terms and conditions required by policy to protect government's interests.

SUMMARY

In addition, the ministry did not always administer contract payments or sub-contract approvals in accordance with the contract, nor did it evaluate service provider performance as required by policy.

This finding is important because without adequate and effective contract administration and management, the ministry is challenged to ensure it receives the program deliverables it expects. In addition, if the ministry is not monitoring for ongoing compliance with the contract terms and conditions, there is a risk that government's interests will not be protected.

We observed several factors that may help to explain why the ministry experienced challenges with its procurement and management of the FMEP contract. First, the contract structure – cost-plus, rather than maximum price – was set during the original outsourcing of the program in the late 1980s. This structure has affected the ministry's ability to get assurance over best value for money. Secondly, the ministry's responsibility to ensure the service was delivered without interruption shaped its decisions on the procurement. The ministry may have been concerned that moving to a new vendor would increase the risk of service interruption, as a new vendor would be less familiar with key business systems than the incumbent. Thirdly, at the time of the procurement, the ministry's contract and financial management was decentralized, limiting the role for oversight by corporate services staff.

We made a number recommendations for the ministry:

- ♦ improve the process for the upcoming procurement for the FMEP contract in 2018
- ♦ address previous external recommendations to improve the contract design
- ♦ improve executive oversight of policy compliance and risk management for significant contracts

Although we only examined one contract, we identified areas where additional policy or guidance may have supported the ministry in its procurement and contract management. There is an opportunity for the Office of the Comptroller General to consider whether the audit findings may be relevant to other contracts, and whether additional procurement guidance would help all ministries.

SUMMARY OF RECOMMENDATIONS

WE RECOMMEND THAT THE MINISTRY OF JUSTICE:

- 1** Use a procurement specialist, who is independent of the Justice Services Branch, to lead, plan and carry out the upcoming procurement for the contract for the FMEP.
- 2** Direct the procurement specialist (as per Recommendation 1) to address previous audit recommendations when they assess service delivery options and potential contract terms.
- 3** Establish procedures to ensure the ministry's Chief Financial Officer and legal counsel review and confirm that non-standard forms of contract for significant programs have met the requirements of policy and are consistent with the objectives of policy.
- 4** Develop guidance for program managers regarding when to evaluate contractor performance, as required by policy, in situations where a new procurement is initiated before the existing contract has come to an end.
- 5** Ensure that executive oversight of significant contracts includes monitoring program management's response to identified risks (e.g., risks identified by ministry legal counsel, ministry or external procurement experts, and senior ministry financial staff).

RESPONSE FROM THE MINISTRY OF JUSTICE

THE MINISTRY ACCEPTS the importance of not only achieving, but being able to demonstrate that it has achieved, “best value” for program money spent on the Family Maintenance Enforcement Program.

It therefore accepts and welcomes the Auditor General’s recommendations for improvements to FMEP contract procurement, contract design, additional guidance for FMEP program administrators in performance evaluation, and ways to enhance executive oversight. Indeed, the Ministry has already implemented the first two recommendations.

However, the Ministry also considers it appropriate to place the lack of an audit assurance of “best value for money” in the context of the value actually achieved by the FMEP. In that regard, the Ministry notes that the audit expressly did not examine the quality of the services delivered under the contract or the value of the services to the spouses and children who receive payments via the FMEP, and made no findings in those respects.

The FMEP has successfully provided an essential service to BC families for nearly 30 years. It is part of the core family justice services of the Ministry.

More than \$3.4 billion has been collected and disbursed for the benefit of children and spouses. The total collected overall and the total collected per case has increased every year. The program has focussed on customer services, resulting in both strong results for families who depend on receiving court-ordered child and spousal support. It has also had a very low rate of

complaints or enquires from parents who are required to pay support.

The Ministry has a comprehensive set of performance measures for the component services provided by the contractor. The measures that mean the most of families, the key elements of program performance – support paid, communication with program staff, enforcement measures that don’t require court – have all improved over time. These results are the product of continuous improvements in all component areas – from initial enrolment of cases through various case management and enforcement processes, legal services, payment processing and IM/IT support.

This continuous improvement process has resulted in improved services while addressing the increasing costs associated with staffing, building occupancy and technological support. In some areas, such as payment processing and enrolment, costs have been reduced while results were improved. All of this was achieved by collaboration between the Ministry and the service provider, often beyond the strict requirements the contract placed on the service provider.

BC’s program has been recognized across Canada for its innovation in both case management and use of technology, particularly in regards to web services. FMEP developed Canada’s first interactive web

RESPONSE FROM THE MINISTRY OF JUSTICE

services for support enforcement. BC's program is often internationally referenced for innovation and advancing services to the public.

The justice system in Canada has undertaken a process of transformation in recent years to better address the legal needs of citizens, including in family justice services. Such services, including support enforcement, must continue to adapt to the changing needs of families and continuously improve all aspects of their programs to ensure that families have access to justice when they need it and in a way that serves their interests. Maintenance enforcement services, just like all services to families, are in a continuous process of evolution to meet these needs and apply the best service practices that we learn from our experience and the experience of others, both at home and around the world.

All of that said, the Ministry further affirms that it is important to avail itself of guidance on procurement practices and other matters, including as provided by the Core Policy and Procedures Manual. Meeting only the formal requirements can, as demonstrated by the FMEP experience, be not good enough. With the benefit of this report, the Ministry will be able to do better in future.

BACKGROUND

FAMILY MAINTENANCE ENFORCEMENT PROGRAM CONTRACT HISTORY: 1988 – 2016

IN 1988, GOVERNMENT announced its plan to privatize government assets and services. As part of the plan, government encouraged public servants to form companies to deliver the services they had provided as employees. Government supported its employees to do this in a number of ways, including structuring contracts to reduce risks and giving a 5% price preference to employee groups (relative to private sector bids).

The **Family Maintenance Enforcement Program (FMEP)** operates under the *Family Maintenance Enforcement Act* in the Ministry of Justice.*

The FMEP monitors and enforces family maintenance orders and agreements. A maintenance order is a court order requiring one person (the payor) to provide payments to another person (the recipient) for child or spousal support. A maintenance agreement is a document signed by a payor and a recipient and filed in a court, stating that maintenance will be paid for children and/or a spouse.

Anyone with a valid maintenance order or agreement can enroll in the program – not just

those with unpaid maintenance. Many recipients enroll because it is easier to have the FMEP collect and track payments than to do it themselves. Enrolment in B.C. is voluntary. About half of Canadian provinces and territories also have a system where enrolment is voluntary.

The Maintenance Enforcement and Locate Services (MELS) Division, within the Justice Services Branch of the Ministry of Justice, is responsible for the FMEP. The director of MELS is designated as Director of Maintenance Enforcement under Section 2 (1) of the *Family Maintenance Enforcement Act*.

The first two privatization agreements, announced January 21, 1988, were with employee groups from the Queen's Printer and the Feed and Tissue Laboratory in Kelowna. Government also outsourced the environmental laboratory, the dairy laboratory and Beautiful BC Magazine to employee groups.

Also in 1988, government expanded a pilot maintenance enforcement project for the whole province – and outsourced it.

The first contract for administering the provincial Family Maintenance Enforcement Program (FMEP) was awarded to Themis Program Management

* As of July 18, 2017, the Ministry of Attorney General.

BACKGROUND

Consulting Ltd. (Themis), a company set up by a government employee who had run the pilot maintenance enforcement program.

Today, Themis, under different ownership, continues to hold the contract to provide the services of the FMEP. Themis' parent company, Gaea Management Ltd., was purchased by Maximus Canada Inc. in 2002. Themis and Gaea have 200 full-time equivalent positions involved in delivering the FMEP.

FMEP contract history

The ministry renewed the contract with Themis (the service provider) several times during the 1990s. In 2000, the ministry advertised the contract for the FMEP. The procurement process resulted in a direct award of the contract to the same service provider, starting in 2002. The ministry went to market again in 2006, and the same service provider was the only vendor that responded to the opportunity.

With only one vendor expressing an interest in the opportunity, the ministry did not request proposals, and instead once again, directly awarded the contract

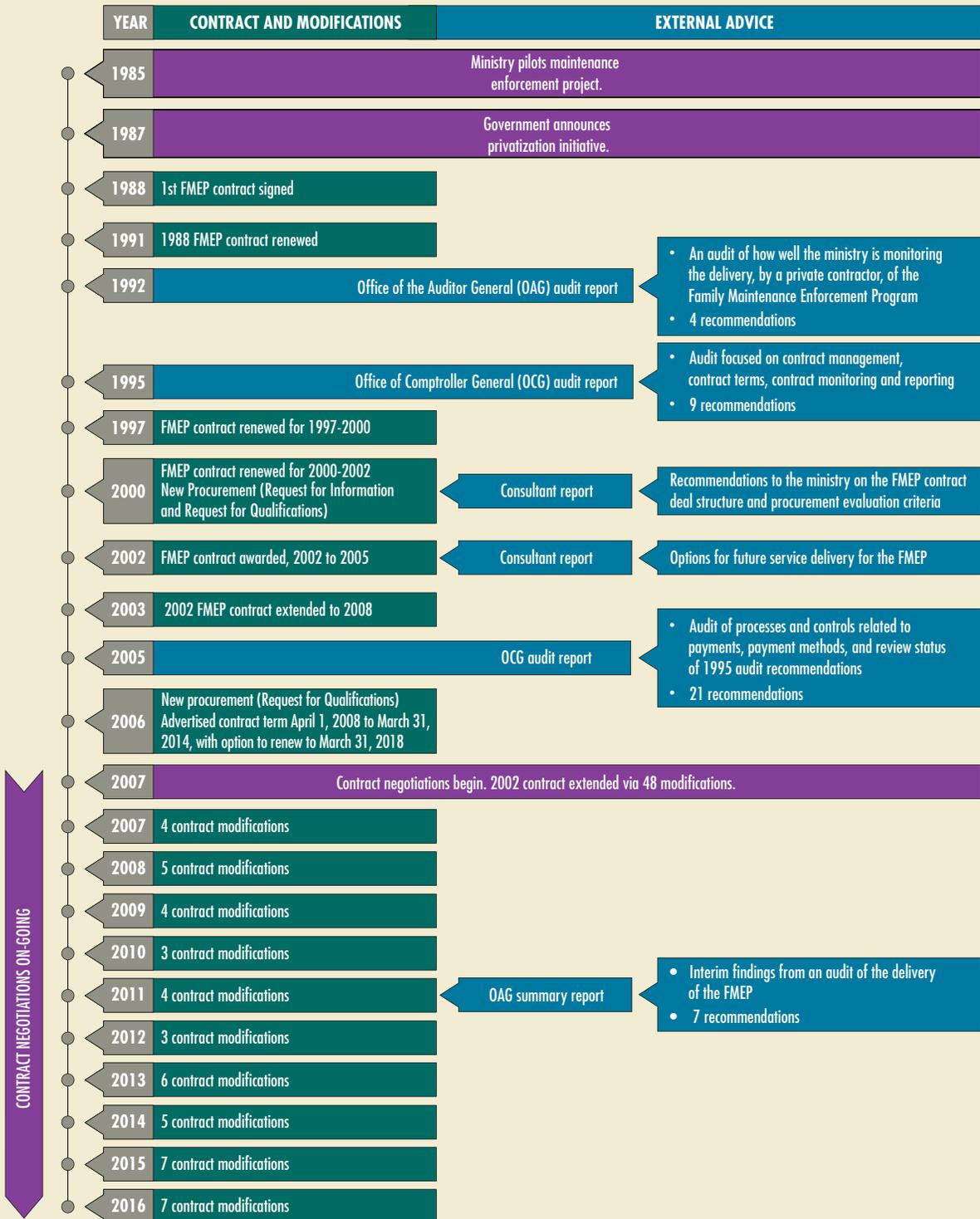
to the same service provider. The contract from the 2006 procurement was to run from April 2008 until March 2014, with an option to renew until March 2018.

The ministry began negotiations for the new contract in January 2007, but negotiations encountered difficulties and, as of June 15, 2017, have not resulted in a new contract with the service provider. To continue to provide services during negotiations, the ministry and service provider have extended the 2002 contract through 48 modification agreements.

Since 1988, the FMEP contract and service delivery model have been assessed by consultants at the request of the ministry, as well as audits initiated by Internal Audit & Advisory Services in the Ministry of Finance and by the Auditor General of British Columbia. All have made recommendations to improve the ministry's contract management practices. [Exhibit 1](#) summarizes the contract history, including these external reviews.

BACKGROUND

Exhibit 1: Family Maintenance Enforcement Program Timeline



Source: Office of the Auditor General of British Columbia, based on information from the Ministry of Justice and publicly available archival sources

BACKGROUND

FMEP caseload and costs

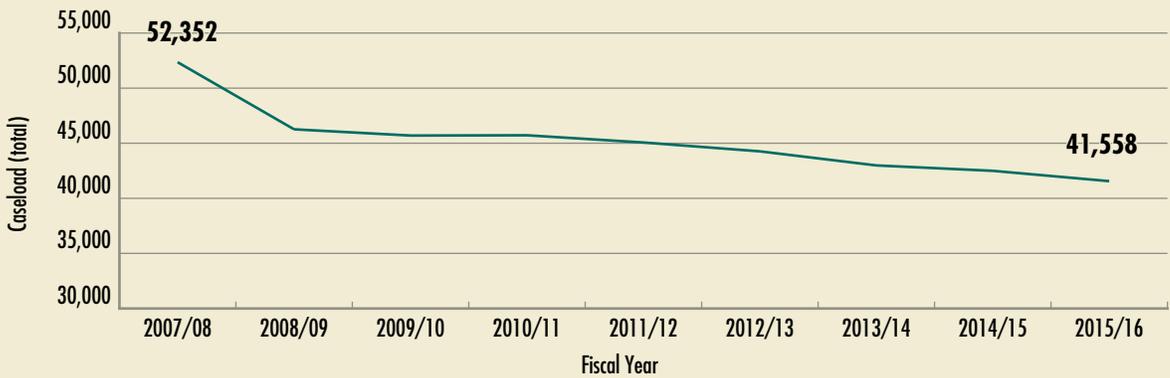
In 2015/16, the FMEP collected \$215 million in maintenance payments and had approximately 41,500 cases on file. On average, recipients received \$500 per month.

For 2015/16, about 65% of recipients received some payment, 30% were fully paid and 5% had never

received any payment. Of those who received some payment, just over 60% were still owed more than \$3,000.

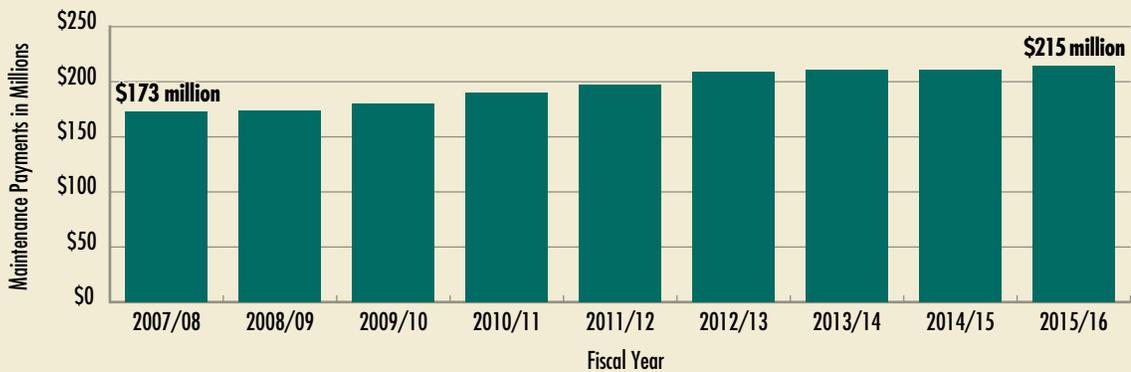
The number of cases has decreased by more than 20% since 2008 (Exhibit 2), while the trend for total maintenance payments has climbed steadily since the program began (Exhibit 3). This is because the average amount of a maintenance order has increased over time.

Exhibit 2: The number of maintenance cases enrolled in the FMEP declined between 2007–2016



Source: Office of the Auditor General of British Columbia, based on Ministry of Justice data (unaudited)

Exhibit 3: Total maintenance payments administered by FMEP increased between 2007–2016



Source: Office of the Auditor General of British Columbia, based on data from the Ministry of Justice (unaudited)

BACKGROUND

FMEP contract structure

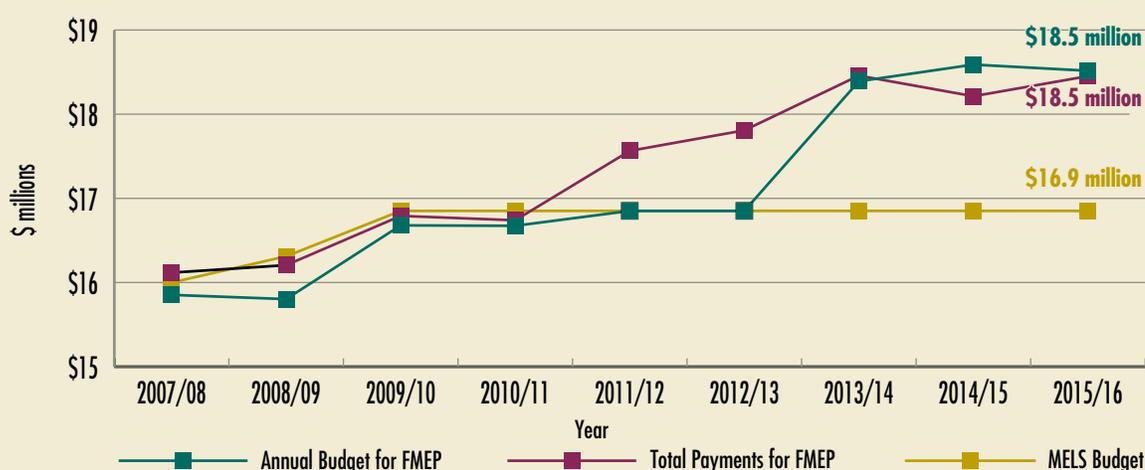
The FMEP contract is structured as a cost-plus contract. This means the ministry pays for all of the FMEP's operating costs and provides the service provider with a management fee. The contract capped the management fee at 8% of the program's operating budget.

Each year, when the ministry's budget for the program is approved, it informs the service provider of the budgeted amount. The service provider develops a detailed operating budget and the ministry and the service provider agree on service levels for the coming year. If the service provider's costs increase during the year, it can request more funding to maintain agreed upon service levels. The ministry then faces the choice of finding more money or accepting a reduction in FMEP service levels. In this situation, the ministry faces all the consequences if the service provider's costs go up.

Since 2007/08, contract costs for FMEP have increased 13%, with ministry payments to the service provider totalling \$18.5 million in 2015/16 (see Exhibit 4). The MELS budget for the contract has been \$16.9 million since 2009/10, even though program costs have been increasing. Rather than risk a reduction in service levels, the ministry has approved annual budgets for the FMEP program based on the service provider's cost forecasts.

The ministry has identified increased costs for staffing, insurance, building occupancy and IT systems as contributing factors. The ministry has funded these cost pressures through a combination of internal ministry savings and transfers from the Contingencies vote (for an explanation of how the Contingencies vote works, see our report on the [Budget Process Examination Phase 2: Forecasting for Operating Expense, Capital Spending and Debt.](#))

Exhibit 4: FMEP contract cost has generally been higher than budget since 2007



Source: Office of the Auditor General of British Columbia, based on data from the Ministry of Justice (unaudited) and from audited financial statements for the FMEP

BACKGROUND

PROCUREMENT AND CONTRACT MANAGEMENT

What is procurement and why is it important?

Procurement is more than just purchasing. It includes finding, acquiring and buying goods and services from an external source – often via a competitive bidding process.

In the public sector, procurement is important because it involves significant public investment in contracts that support the delivery of public services. Public sector procurement must follow government legislation and policy, trade agreements and common law (see [Appendix A](#)).

Government policy for ministry procurement

All ministries must comply with government policy for procurement and financial management, as set out in the Core Policy and Procedures Manual. A stated objective of government procurement policy is to get best value for the money it spends.

This objective is based on the principles of fair and open public sector procurement: competition, demand aggregation (bringing together government organizations to take advantage of savings from group purchasing), value for money, transparency and accountability. Competition in procurement is

particularly important because it can help government get the services it needs at the lowest cost the market can offer.

However, best value for a contracted service is more than just going with the cheapest bidder. It also includes ensuring the contractual arrangement:

- ◆ defines the quality of service
- ◆ is fair to both government and the vendor
- ◆ manages legal and financial risks to government
- ◆ provides for continuity of services (if the vendor changes)

THE ROLE OF POLICY

Government's procurement policy and guidance are designed to help ministries achieve best value through their procurements and contracts. By following practices that comply with policy and guidance, ministries can demonstrate that they have taken steps to achieve best value. That said, complying with policy does not ensure best value, but the risk of not achieving best value is much higher when policy and guidance are not followed.

Government has developed procurement guidance and tools to help ministries:

- ◆ meet the expectations of legislation, policy and trade agreements
- ◆ minimize the risks of inappropriate procurement practices and decisions
- ◆ treat vendors fairly

BACKGROUND

Government's procurement policy (Chapter 6 of the Core Policy and Procedures Manual) and supporting guidance have not changed significantly since 2006 (when the most recent FMEP procurement was happening).

Procurement roles and responsibilities

Responsibility for procurement in government is shared between ministry staff, the Procurement Governance Office in the Ministry of Finance, and the Procurement Services Branch in the Ministry of Technology, Innovation and Citizens' Services.* The Legal Services Branch in the Ministry of Justice also has a role in providing advice on legal aspects of procurement (see [Exhibit 5](#)).

The authority for ministry staff to enter into contracts comes from enabling ministry legislation. For example, the authority to contract for the delivery of FMEP comes from the *Family Maintenance Enforcement Act*, administered by the Ministry of Justice. How ministry staff are to conduct procurement and contract management activities is defined in government procurement policy and guidance. Deputy ministers have overall responsibility for financial control within their ministries and are accountable for ensuring the appropriate delegation of authority to staff. This necessarily and appropriately includes delegating responsibility for program delivery and designating an executive financial officer and chief financial officer to implement and monitor the overall performance and effectiveness of ministry financial administration systems, and ensure compliance with policy.

The Procurement Governance Office is responsible for:

- ♦ developing and revising corporate procurement policy (Chapter 6 of the Core Policy and Procedures Manual)
- ♦ providing official communications and interpretations of the policy
- ♦ monitoring and reporting on compliance with policy and trade agreement requirements
- ♦ managing government's vendor complaint review process

The Procurement Services Branch (PSB) in the Ministry of Technology, Innovation and Citizens' Services develops and maintains guidance and tools that support ministries in getting the most out of their procurement process. Guidance includes the Purchasing Handbook and templates to support procurement activities, as well as specialized procurement advice. PSB charges fees to ministries for its services to cover its costs.

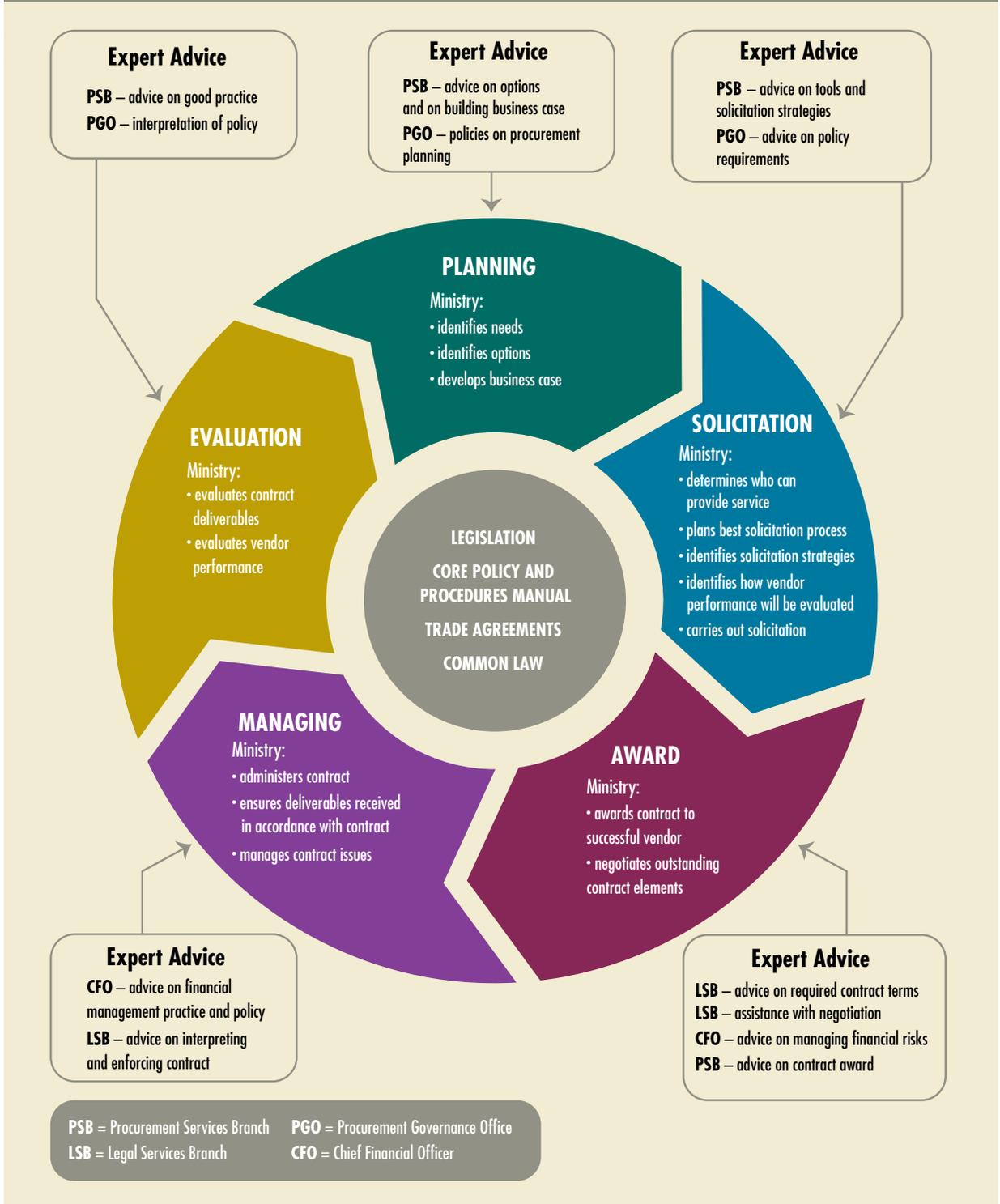
The Legal Services Branch supports the procurement process by providing advice through:

- ♦ identifying and managing legal risks with solicitation strategies
- ♦ recommending contract terms and assisting with contract negotiations
- ♦ interpreting and enforcing contract terms

* As of July 18, 2017, the Ministry of Citizens' Services.

BACKGROUND

Exhibit 5: Procurement and contract management



Source: Office of the Auditor General of British Columbia, based on B.C. government procurement guidance

BACKGROUND

Procurement strategy options

Once a ministry has determined the need to procure a service, it needs to analyze the market to determine who is able to provide the service, and choose the appropriate solicitation strategy. According to government guidance, the solicitation phase normally involves the greatest effort and risks, because it is complex and variable, and can result in legal and financial obligations for the province. Due to these risks, the solicitation phase needs to be carefully structured and controlled.

The choice of procurement strategy and tools depends on the complexity, value, risks and circumstances of the opportunity, as well as the availability and interest of potential suppliers. The procurement process can range from directly awarding a contract, to a multi-stage process that involves gathering information from the vendor community, pre-qualifying vendors and soliciting competitive bids or proposals. Exhibit 6, adapted from government’s procurement guidance, identifies important procurement tools and when to use them.

Exhibit 6: Procurement tools to support solicitation			
	Information gathering	Pre-qualification	Solicitation
Examples of tools	Request for Information (RFI) Request for Expressions of Interest (RFEI)	Request for Qualifications (RFQ)	Request for Proposals (RFP)
When to use	When you need input on developing a procurement strategy When you do not know the potential market of suppliers for the service	When you have many potential bidders and need to narrow the pool to a shorter list so that they can later compete on a opportunity	When you want to get competing proposals that are designed to meet a service need
Intended result	Information about the market	List of vendors who are qualified to compete on a future opportunity	Contract between government and successful vendor for the delivery of a service

Source: Office of the Auditor General of British Columbia, based on B.C. government guidance

BACKGROUND

Using a process that is too complex for the value of the opportunity comes with risks:

- ◆ A multi-stage process for a small, low-value contract could discourage potential vendors from competing, because the cost of participating in the competition could be greater than the value of winning the contract.
- ◆ An overly complex process would also impose unnecessary costs on government, in terms of time and resources. For example, all of the steps in a multi-stage process wouldn't be necessary if government was looking to hire a facilitator for a two-day event, or a writer for a 20-page report.

But using a process that is too simple for a complex opportunity also creates risk. If the process is not rigorous enough to demonstrate fairness where there is significant competition, or where the opportunity has a high profile, this could negatively affect government's reputation for running fair and open procurements.

AUDIT OBJECTIVE AND SCOPE

AUDIT OBJECTIVE

WE DID THIS audit to determine whether the Ministry of Justice procured and managed the contract for the Family Maintenance Enforcement Program (FMEP) in accordance with government policy and guidance to achieve best value for money.

THE ROLE OF POLICY

Government procurement policy and guidance are designed to help ministries achieve best value through their procurements and contracts. By following practices that comply with policy and are consistent with procurement guidance, ministries are able to demonstrate that they have taken steps to achieve best value. That said, complying with policy is not an assurance of best value. But the risk of not achieving best value is much higher when policy and guidance are not followed.

CORE POLICY AND PROCEDURES MANUAL, CHAPTER 6

6.1 OBJECTIVES

The following objectives for government procurement of goods, services and construction are based on the principles of fair and open public sector procurement: competition, demand aggregation, value for money, transparency and accountability. They are:

- ◆ acquisitions are managed consistent with government policy and requirements of trade agreements
- ◆ government receives the best value for money spent on contracts
- ◆ vendors have fair access to information on procurement opportunities, processes and results
- ◆ acquisition and disposal opportunities are competed, wherever practical
- ◆ ministries only engage in a competitive process with the full intent to award a contract at the end of that process
- ◆ ministries are accountable for the results of their procurement decisions and the appropriateness of the processes followed
- ◆ government buying power is leveraged through corporate supply arrangements and demand aggregation, wherever practical
- ◆ the cost of the procurement process, to both vendors and ministries, is appropriate in relation to the value and complexity of each procurement
- ◆ assets that are surplus to the needs of government are disposed of in a coordinated way to maximize the dollar return to government, and to minimize the risk to the environment

AUDIT OBJECTIVE AND SCOPE

CRITERIA AND SOURCES

We developed the objective and audit criteria based on the B.C. government's Core Policy and Procedures Manual and procurement guidance. Ministry of Justice management reviewed and accepted the suitability of the criteria used in the audit.

AUDIT SCOPE AND APPROACH

The Ministry of Justice ran a procurement in 2006 for the Family Maintenance Enforcement Program (FMEP), for a contract to start in 2008 and run to 2018. Our audit focused on the procurement, design and management of this contract in the Ministry of Justice (formerly the Ministry of Attorney General).

We looked at the 2006 procurement process and the contract management practices from 2008 to 2016.

We did not examine the quality of the services delivered under the contract or the value of the services to the spouses and children who receive payments via the FMEP, and therefore, we made no findings in those respects.

We carried out our work between March 2016 and November 2016, and substantially completed the audit on June 15, 2017. Our work involved reviewing the contract and related documents and conducting interviews with ministry staff. We conducted this audit in accordance with the standards for assurance engagements set out by the Chartered Professional Accountants of Canada (CPA) in the CPA Handbook – Assurance and Value-for-Money Auditing in the Public Sector, Section PS 5400, and under the authority of Section 11 (8) of the *Auditor General Act*.

AUDIT CONCLUSION

WE CONCLUDED THAT, with a few exceptions, the Ministry of Justice (ministry) procured and managed the contract for the FMEP in compliance with government policy. However, the ministry's procurement choices, while within policy, were not consistent with key elements of government procurement guidance and did not achieve the procurement principle of competition. The design of the contract and the ministry's contract management practices neither mitigated known risks, nor enabled the ministry to demonstrate achievement of best value for money.

KEY FINDINGS AND RECOMMENDATIONS

OUR AUDIT LOOKED at whether the Ministry of Justice (ministry) complied with policy in its procurement and management of the Family Maintenance Enforcement Program (FMEP) contract. We also looked at whether the ministry's decisions and practices with respect to the FMEP contract were consistent with government guidance.

Policy sets the minimum requirements ministries must meet to protect the interests of the province when they are contracting for services. In addition, government provides guidance to support ministries to achieve best value with their contracts. When ministry staff decide how to apply the guidance, they can exercise judgement and make choices within the policy framework.

Through the choices they make in their procurements, it is possible for ministries to meet policy requirements but not achieve the policy objective of best value. For example, directly awarding a contract rather than going to market may be efficient and within policy, but the lack of competition may not generate the best value for taxpayers.

In the first section of this report, we look at whether the ministry complied with government policy. We have not made recommendations for the first section of the report, because the ministry was generally in compliance with policy. In the latter sections, we look at whether the ministry's decisions and choices were consistent with government guidance and good practice expectations. In those sections, we provide recommendations for improvement. In the final section of the report, we provide some context

and analysis of potential reasons for the challenges the ministry experienced with the procurement and management of the FMEP contract.

GENERALLY COMPLIED WITH POLICY

Overall, we found that the Maintenance Enforcement and Locate Services (MELS) complied with the procedural requirements in government policy for procurement, contract design and contract management, with a few exceptions.

This is important because government has designed these procedures to support ministries to achieve the policy objective of best value for money. The procedures also support the principles of fair and open procurement, which align with government's broader obligations under trade agreements and common law principles (see [Appendix A](#)).

This helps to maintain government's reputation for good procurement practices. Fair and open procurement also encourages potential vendors to bid on contracts in a thriving, competitive market.

KEY FINDINGS AND RECOMMENDATIONS

Government's policies regarding contract design and contract management are designed to protect its interests to deliver services at the expected level of quality, for the best price.

What we looked at

We examined whether MELS' planning, solicitation and evaluation of submissions for the FMEP procurement followed government's procurement policies and guidance, as laid out in the Core Policy and Procedures Manual and the Purchasing Handbook that were in place at the time of the procurement in 2006. We also examined whether the ministry designed and managed the FMEP contract from 2008 to 2016 in compliance with government policy.

What we found

Compliance with policies for procurement planning, solicitation and evaluation of submissions

We found that MELS complied with the mandatory policy requirements for planning the FMEP procurement in 2006. This included drafting a cost-benefit analysis and consulting with Common Business Services (now known as the Procurement Services Branch) on aspects of the procurement.

We also found MELS complied with the mandatory policy requirements for the pre-qualification process. This included using the government Request for Qualifications (RFQ) template, and advertising it on BC Bid for the appropriate length of time. And, MELS set the criteria for evaluating submissions before the RFQ opportunity closed, as required by policy.

We noted as well that MELS exercised good judgement to keep key procurement documents in the contract file. Having these documents on file maintains corporate knowledge of the procurement and contract history and MELS can use them to inform its next procurement.

Compliance with policies for contract design and management

We found MELS complied with the mandatory policy requirements for designing and managing the contract, with a few exceptions. The exceptions related to not having a maximum contract price, not having security and privacy schedules, and not having adequate performance measures or evaluation. These are explained further in the contract design and management sections below.

As required by government policy, MELS had legal counsel review the contract, as it did not use government's standard template. Ministries are only expected to use the templates in certain situations, for example, where the contract is for less than \$250,000. Legal counsel review of non-standard contracts is important to ensure they include necessary terms to manage risks and protect government's interests.

KEY FINDINGS AND RECOMMENDATIONS

MELS included contract terms to protect the assets the service provider created with program funding – with some exceptions. This is important because if a contract results in new assets, such as an IT system, those assets need to be protected, maintained and potentially transferred to government or the next service provider at the end of the contract term. If done right, this proactive transition planning helps ensure government programs can continue to function smoothly – even after a change in service provider.

The ministry made many modifications to the 2002 contract to support the continued delivery of services during negotiations that commenced in 2007. We found MELS took steps to confirm the 48 contract modifications (between 2007 and 2016) stayed consistent with the scope of the opportunity advertised in 2006.

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

PROCUREMENT STRATEGY WAS INADEQUATE

Overall, we found MELS did not choose a procurement strategy that would generate competition, nor did MELS respond to the lack of competition. The approach they took resulted in only one vendor responding. The ministry then decided to directly award the contract, rather than issuing the planned Request for Proposals.

This finding is important because competition promotes fair and equitable access to government contracts, enables the ministry to demonstrate that the fees it pays are competitive, and ultimately, supports government to achieve best value for money. Ministry staff need to use judgement to apply government's procurement guidance in a way most likely to meet the policy objectives. The choices they make can impact their ability to generate competition or to adequately respond to a lack of competition, which in turn impacts the integrity, credibility and outcome of the procurement process.

The FMEP procurement experience highlights the challenge of balancing the tension between the principles of fair and open competition and maintaining service during and after procurement. It also underscores the importance of getting advice and expertise for complex procurements.

While MELS did get advice from government procurement specialists, the scope of advice it

KEY FINDINGS AND RECOMMENDATIONS

sought was narrow. Specialized expertise can support ministry staff to achieve a competitive process that is appropriate to the complexity of the service. It can also help balance the tension between ensuring service continuity and getting the benefits that are expected to come from competing this type of long-term contract.

What we looked at

We examined whether MELS' procurement strategy was consistent with government guidance. We also examined the Request for Qualifications (RFQ) document to determine whether it was consistent with government guidance. Additionally, we examined the ministry's decision to directly award the contract and the steps it took to notify the market of its procurement strategy.

What we found

Procurement strategy not best suited for the circumstances

We found that the procurement strategy MELS selected, issuing an RFQ, was not best suited for the circumstances. An RFQ is designed to identify and pre-qualify a small number of vendors from a much larger market of potential vendors. However, MELS had no evidence of a large market of potential vendors for the FMEP (see [Exhibit 6](#)). Further, MELS' limited research of the market meant that it lacked information to be able to design a strategy that would be most efficient and most likely to generate competition.

Although some jurisdictions in the United States outsource their family maintenance enforcement programs, B.C. is the only jurisdiction in Canada to outsource its program. MELS did not conduct research to determine whether there was a potential market of vendors for this contract, including finding out whether any of the U.S. companies might be interested in this opportunity.

For its 2000 procurement, MELS had used the same strategy of issuing an RFQ in advance of an RFP, and it resulted in the same outcome: only one qualifying response to the RFQ from the incumbent service provider and the direct awarding of the contract to that service provider without an RFP.

An RFQ provides potential vendors an opportunity to show their *capability* to provide the service. Vendors who are successful with the RFQ are then qualified to move to the Request for Proposals (RFP) stage. The RFP is designed to provide the opportunity for vendors to explain *how* they intend to provide the service (costs, quality, timing, etc.).

In a situation where market interest might be limited, procurement guidance recommends using a Request for Expressions of Interest (RFEI) to assess the market. An RFEI is used to determine how many potential qualified vendors are available and interested, and it doesn't require a large time investment from vendors to respond.

Government's procurement specialist recommended this strategy to MELS for the 2006 FMEP procurement, but MELS chose instead to issue an RFQ – even though they had no evidence of a market

KEY FINDINGS AND RECOMMENDATIONS

appropriate to that strategy. As a result, government's strategy required the vendor community to invest time in an RFQ when there was no evidence a pre-qualification step was necessary.

If the pool of qualified vendors is limited, ministries are advised to consider re-designing the opportunity to encourage more interest – and ultimately, competition. Alternatively, ministries can consider how to mitigate the risk of going to market and not getting competition.

Request for Qualifications (RFQ) not well designed

We found that MELS did not take sufficient steps to design the RFQ such that it provided a level playing field for all potential vendors. The RFQ may have made the opportunity seem more risky to potential vendors who did not have the current service provider's knowledge of the program.

For example, the RFQ stated that the vendor would have to pay for expenses if the program went over its annual budget, which could seem a significant risk to profit. However, during the period of our audit from 2006 to 2016, the ministry consistently increased the funding in response to rising costs.

Further, the RFQ was not clear enough on how the costs of transferring the program to a new vendor would impact how their bid would be evaluated, and therefore, their chance of success. All potential vendors need to be informed of known risks and profit

potential. This is particularly important for contracts of this size and complexity, where potential vendors will have to invest significant resources to put forward a proposal.

We also found that the RFQ evaluation criteria closely paralleled the program's existing business practices, which could have discouraged other vendors from competing. For example, respondents were asked to demonstrate their prior experience with the ministry's IT security standards and whether they had developed customized software for maintenance enforcement. No other vendor would be likely to have both experience with the ministry's IT security standards and have developed customized software for maintenance enforcement.

Notice of Intent (NOI) not issued

We found that because the ministry didn't issue a Notice of Intent (NOI), it could not confirm that there were no other potential vendors. An NOI is how government announces its intent to directly award a contract and gives vendors one final chance to express interest. It also enhances transparency.

If a contract goes to direct award, government policy requires ministries to issue an NOI, unless a procurement meets specific criteria (and MELS concluded that it did). However, issuing an NOI is still considered good practice.

KEY FINDINGS AND RECOMMENDATIONS

Request for Proposals (RFP) not issued

The ministry directly awarded the contract and did not move to the RFP process. The RFP defines the ministry's expectations, and vendors submit proposals explaining how they will meet these expectations.

These proposals are binding and serve as the basis for the contract. Without a proposal from the incumbent, the ministry went back to the draft contract from the RFQ as the starting point for negotiations, which was substantially the same as the 2002 contract.

This decision meant MELS had not fully defined what it was looking for and did not have a binding proposal from the current service provider. Subsequently, MELS and the service provider have spent the last ten years trying to negotiate the terms of a new contract.

At the time of our audit, and after ten years of negotiation, the parties had not agreed to the terms of a new contract and MELS had extended the 2002 contract through 48 modifications. Although the modifications have extended the contract's term, expanded the scope of work and increased the amounts paid to the service provider, the modifications have not changed the main contract terms and conditions.

The ministry has contracted with the same vendor since 1988, when the program started. The ministry staff who manage the FMEP contract have been in their roles for a substantial length of time, some for almost twenty years.

Although it is not possible to know why other vendors did not compete, there is a risk that the long-term relationship with the vendor, combined with the ministry's level of involvement in the day-to-day operations of the FMEP, could have been perceived as a barrier by potential vendors. To protect the reputation of both government and vendor staff, the ministry should engage a procurement expert who is independent of the Justice Services Branch.

RECOMMENDATION 1: *We recommend that the **Ministry of Justice** use a procurement specialist, who is independent of the Justice Services Branch, to lead, plan and carry out its upcoming procurement for the contract for the FMEP.*

KEY FINDINGS AND RECOMMENDATIONS

CONTRACT DESIGN WAS INADEQUATE

Overall, we found that the contract in place between the ministry and the service provider (which is the 2002 contract with 48 modifications), did not include all terms and conditions required by government policy to protect government's interests. Although the MELS had received advice on how to improve the contract design to gain greater assurance of obtaining best value for money, it did not address the recommendations it had received.

This is important because a well-designed contract protects government's interests. Contract terms determine whether government will get everything it requires and what its options are if it does not. And failure to follow policy or expert advice in contract design can reduce a ministry's ability to get the expected benefits from outsourcing. This would include having certainty over budgets and transferring appropriate risks to the service provider.

MELS has not successfully negotiated modifications to the current contract to address areas it knows are not compliant with government's policy. MELS' approach was to address these gaps through terms in the new contract that was to be established after the procurement. However, these new provisions have never come into effect because the new contract has not been signed and negotiations continue.

What we looked at

We reviewed the FMEP contract that's been in place since 2002, along with its 48 modifications. We did this to determine whether the contract included key elements, as required under government policy. We also looked at whether MELS had requested legal counsel to review the draft contract (that it planned to use in negotiations with the service provider), to ensure the contract complied with policy requirements. We examined whether MELS revised this draft contract to ensure the terms and conditions had addressed the advice and recommendations from four external assessments (see [Exhibit 1](#)), and whether MELS requested legal counsel to review the contract with these recommendations in mind.

What we found

Several instances of non-compliance with policy requirements

We found that there were several instances where the contract and its 48 modifications did not comply with policy requirements.

Firm ceiling price

The 2002 contract set a firm ceiling price for the first three-year term, consistent with government's policy requirements. But the contract modifications negotiated since 2005 have not set a maximum price. The Core Policy and Procedures Manual requires contracts to set a maximum, or *ceiling*, price for each

KEY FINDINGS AND RECOMMENDATIONS

contract. In 2007, when MELS requested a review from legal counsel, MELS did not ask whether the design of the contract was consistent with the policy requirement for a maximum contract price.

Security and privacy schedules

MELS prepared a general security schedule as part of the 2002 contract, as required by government policy, but did not have it signed by the service provider. As a result, the contract does not have an enforceable security schedule. We could not determine why the security schedule was never signed.

The contract also lacks a privacy protection schedule, as required by government policy. The security and privacy protection schedules are required to protect the security and privacy of personal and sensitive information. The unsigned security schedule from the 2002 contract also included terms intended to protect assets created with program funds.

Employer/employee relationship

We saw no evidence MELS considered the risk of creating an employer/employee relationship during the planning for the 2006 procurement or in the subsequent contract negotiations.

Government policy directs ministries to avoid employer/employee relationships due to the significant labour relations implications, potential government liability, and implications for both the employer and the employee under the *Income Tax Act*, *Canada Pension Act*, *Employment Insurance Act* and *the Workers Compensation Act of British Columbia*. The ministry now has guidance on this issue, but it was

not in place in 2006. The Internal Audit & Advisory Services' (IAAS) report of 2005 observed that the existing FMEP contract terms created a risk of an employer/employee relationship and recommended MELS address this risk.

Despite the observations from IAAS in 2005, MELS did not seek advice on the issue to ensure the contract terms and conditions avoided establishing an employer/employee relationship as required by policy.

External advice to improve contract design not heeded

We found MELS did not address concerns with contract design identified by external assessments. The ministry received significant recommendations from two consulting firms (in 2000 and 2002), from the Ministry of Finance's IAAS (in 2005), and from our office (in 2011). Recommendations included:

- ♦ to change the cost-plus contract model, sharing the risks and benefits more appropriately between government and the service provider
- ♦ to improve the contract's performance measures

Cost-plus form of contract

MELS told us they considered the recommendation but did not accept it because the cost-plus contract (see sidebar on [page 32](#)) model gives the ministry control over the program budget and operational decisions. It stated this is necessary, given the uncertainty over ministerial budgets and the sensitive nature of the FMEP service delivery. In our view, and

KEY FINDINGS AND RECOMMENDATIONS

as recommended in the various other reports on the FMEP, there are other ways of delivering the service or designing the contract to achieve the ministry's goals, manage risks to government and enhance value for money. For this reason, the recommendation from IAAS still merits consideration by the ministry.

Performance measures to support performance management

We found the measures in the current FMEP contract do not meet the policy requirement to clearly specify quality and quantity of service delivery. Many performance measures are left to the discretion of the contract manager, or are not well-defined with clear targets.

Both the IAAS and our own office recommended improving the performance measures in the contract.

The IAAS recommended the ministry further develop key performance indicators, measures and targets, to align with program objectives and facilitate contract management. Our office recommended the ministry improve the accountability framework by defining goals and objectives for the FMEP, and set binding performance measures and targets.

Even though the FMEP contract did not clearly specify the quality and quantity of service delivery, the ministry told us it has been satisfied with the service provider's performance and program outcomes. Nonetheless, policy requires goals, objectives and targets be defined within contracts. This is because clearly defined contract outcomes:

- ♦ allow the ministry to effectively manage service provider performance or hold the service provider to account, if the ministry is dissatisfied

In a **cost-plus contract**, the government pays the costs to deliver the program, plus an additional amount to the service provider for its services. Cost-plus contracts may encourage service providers to develop services in new or emerging areas, where it is difficult to estimate the costs in advance.

However, as the service develops over time, there are typically fewer unknowns and therefore less need to mitigate the financial risks to service providers. Once costs are stable and predictable, government can shift the contract to a more traditional model, where contract costs to

government are fixed, the service provider makes profit through efficiencies, and government manages service provider performance through service level agreements.

Service level agreements are contractual commitments between the parties that clearly lay out particular aspects of service – such as quality, availability and quantity. There are often rewards and penalties linked to achieving service level agreements. They can be reviewed at specific time periods to allow the contract to evolve as priorities change.

KEY FINDINGS AND RECOMMENDATIONS

- ◆ fully inform service providers of government's expectations
- ◆ avoid damaged relationships and disputes over unanticipated service provider costs
- ◆ enable government to ensure it receives key contract deliverables

RECOMMENDATION 2: *We recommend that the **Ministry of Justice** direct the procurement specialist (as per Recommendation 1) to address previous audit recommendations when they assess service delivery options and potential contract terms.*

RECOMMENDATION 3: *We recommend that the **Ministry of Justice** establish procedures to ensure the ministry's Chief Financial Officer and legal counsel review and confirm that non-standard forms of contract for significant programs have met the requirements of policy and are consistent with the objectives of policy.*

INEFFECTIVE MANAGEMENT OF CONTRACT RISKS

Overall, we found the ministry's contract administration and management practices did not ensure effective management of risks. MELS made contract modifications according to government policy, but did not always administer contract payments or sub-contract approvals in accordance with the contract. MELS monitored activities, but because it had not clearly specified the program objectives and targets in the contract, we could not conclude on whether it was monitoring to ensure program objectives were met. And, MELS did not evaluate service provider performance as required by policy.

This is important because without adequate and effective contract administration and management by MELS, the ministry is challenged to ensure it receives the program deliverables it expects. In addition, if the ministry is not monitoring for ongoing compliance with the contract terms and conditions, there is a risk that government's interests will not be protected.

Evaluating the service provider's performance is important so that if they bid on another contract, government can consider their previous performance and suitability when it assesses the bid. In addition, performance evaluation allows everyone to learn from mistakes and build on successes during the term of a contract. It also allows the ministry to apply

KEY FINDINGS AND RECOMMENDATIONS

lessons from one contract to the management of other contracts, and to demonstrate that it received best value for money.

What we looked at

We examined whether MELS administered the contract modifications and payments according to government policy. We also examined whether MELS monitored the contract to ensure the program met its objectives, and whether MELS had evaluated service provider performance as required by policy.

What we found

Gaps in contract administration

We found MELS' payments to the service provider matched the amounts specified in the contract modifications from 2012 onwards. However, between 2008 and 2012, the contract and contract modifications did not capture the full amounts paid to the service provider because MELS did not build into the contract approximately \$1 million paid each year for:

- ◆ federally funded enforcement programs
- ◆ default fee administration
- ◆ telecommunications

MELS confirmed that it received these services, but we noted that the payments were made without a signed contract in place. This created a risk that if anything went wrong with these services outside the contract, MELS may have had greater difficulty

resolving any disputes than if there had been a formal written contract.

The service provider established a sub-contract with its parent company in 1991. We found no evidence of ministry approval when the service provider made substantial changes to the scope and cost of services under the sub-contract in 2000 and 2008. The ministry did not document its approval until several years after the changes were made. This goes against the terms of the contract, which require the minister to approve any sub-contracts.

Because private sector companies are not bound by government procurement policy, the service provider was able to directly sub-contract with a related party. This creates particular risks to value for money for government because in the absence of competition, there is no assurance the sub-contract price reflects market value. This sub-contract has been worth approximately 13% of the total annual contract costs the ministry paid during the period 2008-2016. Sub-contracts require careful and timely ministry oversight to manage costs and profit, ultimately to support best value for government.

We found that terms defining categories of expenses were not consistent in contract and sub-contract documents, program budget documents and program financial statements. Even though the FMEP external auditor was engaged to confirm the appropriateness of expense classification, clear definitions would better support MELS' ability to monitor the appropriateness of operational expenses, including payments to the sub-contractor.

KEY FINDINGS AND RECOMMENDATIONS

No clearly specified objectives or performance targets in contract

As we noted earlier, the contract had not clearly specified the program objectives and expected performance targets. Therefore, we could not conclude on whether MELS was managing the contract to ensure program objectives were met.

MELS introduced a trend analysis report in response to a recommendation we made during our audit work in 2011, and it also monitored a set of program indicators, based on monthly reports from the service provider – but there were gaps. The reports did not include all of the indicators that the contract required.

No periodic or post-contract performance evaluation

We found MELS had not evaluated the service provider's performance, as required by government policy for periodic and post-contract performance evaluations. Because it was satisfied with program delivery, MELS considered its monthly monitoring of specific indicators as sufficient, and that a broader periodic performance evaluation was not necessary. MELS also considered the post-contract performance assessment required by government policy was not necessary because the 2002 contract had not formally ended. Government's guidance on post-contract evaluation is not clear in situations, such as with the FMEP, where a new procurement is initiated before the existing contract has come to an end.

RECOMMENDATION 4: *We recommend that the **Ministry of Justice** develop guidance for program managers regarding when to evaluate contractor performance, as required by policy, in situations where a new procurement is initiated before the existing contract has come to an end.*

WHAT CONTRIBUTED TO THE CONTRACT CHALLENGES?

The ministry did not effectively procure and manage its contract for the Family Maintenance Enforcement Program to achieve the policy objective of best value. We observed several factors that may help to explain why the ministry experienced challenges with the FMEP contract. First, the contract structure was set during the original out-sourcing of the program in the late 1980s, and this structure affected the ministry's ability to get assurance over value for money. Secondly, MELS' responsibility to ensure the service was delivered without interruption shaped its decisions on the procurement. Thirdly, at the time of the procurement, contract management was MELS' responsibility, not the ministry's. This meant the senior financial staff in corporate services did not have a role in overseeing MELS' decisions on the procurement or the contract's design.

FMEP contract outsourced in 1980s during government's privatization initiative

As we explain in the background of this report, the FMEP contract was outsourced in the 1980s as part of the government's privatization initiative. That initiative was designed to encourage government employees to bid on government service contracts for services they had previously delivered as public sector employees. Former employee groups were given various incentives to bid, and their bids were also given preference.

KEY FINDINGS AND RECOMMENDATIONS

According to an academic research study, the original contracts in the government's privatization initiative were set up in a way that would have likely made it difficult for other private sector bidders to compete when the contracts were re-competed later. The academic research raised a concern that "if the same contract was reopened for bidding in the future, [the company] may be the only one in the province with sufficient capacity to bid on it." ("Privatization in British Columbia: Lessons from the sale of government laboratories," K. Harrison and W. T. Stanbury, *Canadian Public Administration*, 1991). The study identified that both government and the newly created private firm would have a strong incentive to contract with each other since both would have very few alternatives.

This could help to explain why the ministry was not able to get competition on its procurements for the FMEP contract in 2000 and 2006.

In addition, the cost-plus contract structure, which was set early on in the contract history, has made it difficult for the ministry to get assurance over best value for money. Under this cost-plus arrangement, government has:

- ♦ retained the financial risks for service delivery
- ♦ no direct control over how resources are organized to deliver services at the best price possible

Balancing competing program and contract management responsibilities

The Director of Maintenance Enforcement, with a statutory responsibility for enforcing maintenance orders, was also delegated the authority and responsibility for:

- ♦ overseeing the procurement
- ♦ conducting contract negotiations
- ♦ signing contracts and contract modifications
- ♦ approving the service provider's proposed annual budgets
- ♦ ensuring service delivery

The FMEP is a statutory service that is very significant to many families, so it is a high priority for the ministry to keep it running. The director had to balance multiple responsibilities. He was responsible for ensuring services continued to be delivered without interruption. At the same time, he was overseeing a procurement that could result in a new service provider, and potentially, a disruption of services.

The contract for the FMEP is one of many long-standing contractual relationships that government has with vendors for the delivery of services. Therefore, this challenge of competing priorities between competitive procurement and service continuity may be common to other programs. The role of expert advice and ministry oversight in supporting program managers are particularly important with these types of contracted services.

KEY FINDINGS AND RECOMMENDATIONS

Executive oversight of contract was limited

At the time of the 2006 procurement, responsibility for financial management in the Ministry of the Attorney General was decentralized. Each branch, including the Justice Services Branch, was responsible for oversight of its spending and contracts, and key program decisions were left to the program areas responsible for program delivery. Central oversight by ministry designated financial officers (for ensuring compliance with policy) was limited. In 2010, the ministry introduced a new policy that required review and sign-off of all contract approvals by the Assistant Deputy Minister responsible, the ministry Chief Financial Officer, and the Deputy Minister (Deputy Attorney General).

Deputy ministers are responsible for financial control within their ministries and are accountable for the appropriate delegation of authority to staff. This includes delegating responsibility for program delivery and designating an executive financial officer and chief financial officer to implement and monitor the overall performance and effectiveness of ministry financial administration systems.

There was ongoing oversight of FMEP's financial results and budget variances. The Assistant Deputy Minister of Justice Services Branch received monthly updates on FMEP financial and program results, including enrolments and collections, from branch financial staff. Also, starting in 2013, annual contract approval requests were reviewed and approved by financial staff in the Justice Services Branch, the Assistant Deputy Minister of the Justice Services Branch, the ministry Chief Financial Officer, and the Deputy Attorney General.

However, we did not see evidence that ministry executive were being provided complete information about financial, legal and program delivery risks – information required to effectively perform their oversight responsibilities.

We reviewed available documentation, including briefing notes and contract approval documents provided to executive, and found some inconsistent content, inaccuracies and information gaps.

For example, we reviewed the annual contract approval documents required from 2013 onwards. An important information gap was that these documents did not include advice MELS had received on contract design and risks. We also found inconsistencies in how the contract history and information was presented. The basis for the contract was described in three different ways: as a direct award, as tendered by RFQ and as tendered by RFP. The cost savings to government of an outsourced model from a 2012 analysis were presented as \$3.5 million in one document and \$4 million in another. The amount of the severance liability assumed through the contract was significantly understated in two of the contract approval documents – it did not reflect the most current figure as reported in the audited financial statements for the FMEP.

Given the importance and value of the FMEP contract, we expected to see ministry executive, including senior financial staff, being advised of program delivery, and financial and legal risks on a regular basis. There were a number of factors that indicated challenges with this contract, and a need for stronger oversight, including:

- ◆ a history of the program regularly requesting, and being approved for, additional annual funding to cover cost pressures

KEY FINDINGS AND RECOMMENDATIONS

- ◆ a history of procurements that did not achieve competition, resulting in the ministry directly awarding the contract to the incumbent service provider
- ◆ two audit reports and two external reviews, with multiple recommendations for improvement
- ◆ 48 contract modifications over a ten-year period, to continue services because of an inability to negotiate a new contract

We did not see evidence that ministry executive were monitoring and requesting more information to understand the reasons for known challenges. For example, we observed no documentary evidence of ministry oversight to ensure MELS acted on important external recommendations intended to improve the contracted service delivery, contract structure and contract management.

We also found there was a lack of documentation of decisions and supporting discussions between the Assistant Deputy Minister and the Director of Maintenance Enforcement. We were told there were verbal meetings, but there was limited documentation. This makes it difficult for executive to ensure decisions are based on full and complete information, because there is no record that shows the rationale for previous decisions. This can be particularly problematic when there is staff turnover, because their knowledge of the program history is lost when they leave. Lack of documentation has been identified as a shortcoming in other audits involving other ministries.

Lastly, we did not see evidence of senior ministry financial staff monitoring MELS' compliance with policy, and following up with MELS when policy requirements were not being met. This is important because without adequate oversight, ministry executive cannot hold staff accountable for fulfilling their responsibility to comply with policy. Compliance with policy is important to demonstrate achievement of best value for money through fair and open public sector procurement.

RECOMMENDATION 5: *We recommend that the **Ministry of Justice** ensure that executive oversight of significant contracts includes monitoring the program management's response to identified risks (e.g., risks identified by ministry legal counsel, ministry or external procurement experts, and senior ministry financial staff).*

LEARNING FROM THIS AUDIT

The Procurement Governance Office in the Office of the Comptroller General is responsible for developing and revising corporate procurement policy. The Procurement Services Branch in the Ministry of Technology, Innovation and Citizens' Services is responsible for developing and maintaining guidance and tools that support ministries in getting best value from their procurement process, consistent with the requirements of policy.

KEY FINDINGS AND RECOMMENDATIONS

Although this audit only examined one contract, we identified areas where additional policy or guidance may have supported the Ministry of Justice in its procurement and contract management. While we recognize that this contract was developed specifically for the FMEP, and may be different from other government contracts, the procurement challenges will not all be unique. There is an opportunity for the Office of the Comptroller General and the Procurement Services Branch to assess whether the challenges identified in this audit may be relevant to other government procurement, and whether additional guidance could be of value more broadly in government.

Areas for consideration include providing advice on:

- ◆ how to mitigate risks to government when a solicitation for a long-term or continuing service agreement does not achieve competition
- ◆ how and when to use procurement experts and procurement tools such as fairness monitors to enhance transparency for complex or high value procurements
- ◆ when to evaluate contractor performance, as required by policy, in situations where a new procurement is initiated before the existing contract has come to an end.

APPENDIX A:

THE LEGAL ENVIRONMENT FOR PUBLIC SECTOR PROCUREMENT

THE LEGAL ENVIRONMENT for public sector procurement is complex. It includes legislation enabling the purchase of goods and services, legislation that governs the spending of public funds, trade agreement commitments, and the framework of appropriate practices defined by common law. Exhibit 7 provides an overview of these elements.

Exhibit 7: The legal environment for B.C. public sector procurement	
<i>Financial Administration Act</i>	Governs the spending of provincial funds and provides authority for Treasury Board to set policy (Core Policy and Procedures Manual) for government procurement and contracting.
Ministry Legislation	Ministerial authority to enter into contracts derives from enabling ministry legislation. (E.g., the authority to contract for delivery of the FMEP comes from the <i>Family Maintenance Enforcement Act</i> , legislation administered by the Ministry of Justice).
Canadian Common Law	The common law, as established through a series of court decisions, defines the broad parameters for procurement in Canada. For example, court decisions have implied a contractual duty of fairness and good faith on the purchaser such as: a duty to provide proper disclosure, a duty to conduct a fair competition, and a duty to award the contract as tendered.
Trade Agreements	The Province of British Columbia is a signatory to a number of trade agreements which define obligations for provincial procurement opportunities and practices. For example, the Agreement on Internal Trade is a domestic trade agreement that commits provinces and the federal government to support fair and open competition on opportunities over threshold amounts by advertising them nationally.

Source: Office of the Auditor General of British Columbia



OFFICE OF THE
Auditor General
of British Columbia

Location

623 Fort Street
Victoria, British Columbia
Canada V8W 1G1

Office Hours

Monday to Friday
8:30 am – 4:30 pm

Telephone: 250-419-6100

Toll free through Enquiry BC at: 1-800-663-7867

In Vancouver dial: 604-660-2421

Fax: 250-387-1230

Email: bcauditor@bcauditor.com

Website: www.bcauditor.com

This report and others are available at our website, which also contains further information about the Office.

Reproducing

Information presented here is the intellectual property of the Auditor General of British Columbia and is copyright protected in right of the Crown. We invite readers to reproduce any material, asking only that they credit our Office with authorship when any information, results or recommendations are used.



AUDIT TEAM

Sheila Dodds
Assistant Auditor General

Paul Nyquist
Director

Jessica Schafer
Manager

Jake Tynan
Performance Auditor

Jeff Treloar
Performance Audit Analyst



OFFICE OF THE
Auditor General
of British Columbia