

## **INTERNAL AUDIT & CONSULTING SERVICES**

### **INTERCHANGE AND SECONDMENT AGREEMENTS**

**MANITOBA FINANCE AND CIVIL SERVICE COMMISSION**

**FINAL INTERNAL AUDIT REPORT**

**April 2018**



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**MANITOBA FINANCE AND CIVIL SERVICE COMMISSION  
INTERCHANGE AND SECONDMENT AGREEMENTS  
TABLE OF CONTENTS**

	<b>Page</b>
<b>NATURE OF THE PROJECT .....</b>	<b>1</b>
<b>OBJECTIVES AND CRITERIA .....</b>	<b>1</b>
<b>SCOPE AND APPROACH.....</b>	<b>2</b>
<b>BACKGROUND.....</b>	<b>3</b>
<b>ACKNOWLEDGEMENT .....</b>	<b>4</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>SUMMARY OF RECOMMENDATIONS.....</b>	<b>8</b>
<b>DETAILED OBSERVATIONS AND RECOMMENDATIONS.....</b>	<b>12</b>
<b>1.0 EMPLOYEE/EMPLOYER RELATIONSHIP .....</b>	<b>12</b>
1.1 Identification of Interchange and Secondment Agreements.....	12
1.2 Employee/Employer Relationship .....	13
1.3 CRA Statutory Employment Remittances .....	17
<b>2.0 CONTRACT APPROVAL AND HIRING PRACTICES .....</b>	<b>19</b>
2.1 Nature of the Contract.....	20
2.2 Offers of Employment .....	25
2.3 Non-Employment Contracts.....	30
2.4 Employment Contract Approval .....	35
2.5 Payment of Deemed Employees .....	43
<b>3.0 CONFLICTS OF INTEREST .....</b>	<b>43</b>
3.1 Conflicts of Interest .....	43
<b>Appendix A .....</b>	<b>47</b>
<b>Appendix B .....</b>	<b>48</b>
<b>Appendix C .....</b>	<b>49</b>
<b>Appendix D .....</b>	<b>50</b>



## **NATURE OF THE PROJECT**

An in-year request was received from the Department of Finance and the Civil Service Commission (CSC) to perform a review of interchange and secondment agreements with individuals and organizations external to core government.

The review included an examination of the policies and procedures surrounding the approval and payment of interchange and secondment agreements, delegated authorities, and conflicts of interest.

The objective of the review was to identify policy, procedure and control weaknesses that led to the creation of employment relationships without proper approval from CSC and to payments to deemed employees outside of the regular payroll system.

## **OBJECTIVES AND CRITERIA**

The objectives and associated criteria of the review were as follows:

### **1.0 EMPLOYEE/EMPLOYER RELATIONSHIP**

To assess the reasonableness of the steps taken by the OPC in identifying interchange and secondment agreements with individuals and organizations external to core government and in assessing and concluding on the Manitoba Government's financial liability specific to CRA employment deductions and statutory remittances.

#### **1.1 Identification of Interchange and Secondment Agreements**

Steps taken by the OPC support the complete identification of interchange and secondment agreements with individuals and organizations external to core government.

#### **1.2 Employee/Employer Relationship**

OPC's procedures and control activities support the proper classification of employee/employer in accordance with the FAM and CRA requirements for determining whether an employee or a contractor relationship exists.

#### **1.3 CRA Statutory Employment Remittances**

Steps taken by CSC and OPC support the complete identification of required statutory deductions and statutory deductions remitted to CRA.

### **2.0 CONTRACT APPROVAL AND HIRING PRACTICES**

Assess whether policies and procedures ensure the proper authorization of letters of offer and contracts for services, in accordance with government policy.

#### **2.1 Nature of the Contract**

Contract approval policies and procedures clearly define the differences between

employment and other contracts.

## **2.2 Offers of Employment**

Policies and procedures, including departmental policies, prevent and detect letters of offer being extended from outside the CSC.

## **2.3 Non-Employment Contracts**

Policies and procedures ensure the proper tendering and approval of non-employment contracts in accordance with GMA and CSC policies, inclusive of Treasury Board Secretariat review and approval.

## **2.4 Employment Contract Approval**

Contracts are approved in accordance with GMA and CSC policies, including legal services consultation or review as appropriate.

## **2.5 Payment of Deemed Employees**

Policies and procedures prevent the payment of deemed employees through the SAP accounts payable system.

## **3.0 CONFLICTS OF INTEREST**

To assess whether conflicts of interest have been appropriately disclosed and resolved in accordance with government policy.

### **3.1 Conflicts of Interest**

Conflicts of interest have been appropriately disclosed and resolved in accordance with the Principles & Policies for Managing Human Resources section 3.2.1 Conflict of Interest and the GMA section 3.0 Human Resources.

## **SCOPE AND APPROACH**

The scope of the engagement focused on interchange and secondment agreements where an organization or individual has been contracted in to the Government of Manitoba. Agreements where Government of Manitoba employees have been contracted out to other organizations, public sector or otherwise, were excluded from the scope of this engagement.

The review focused on the interchange and secondment agreements identified by the Department of [REDACTED] and the policy, process and procedures followed by the Department of [REDACTED] in reviewing, approving and processing these contracts, inclusive of payment approval and vendor set-up, and on recommendations on how policy and procedures may be improved.

The review considered the following risk factors expressed by management as being

associated with the interchange and secondment agreements:

- Employee/employer relationships masked by an interchange agreement
- Inappropriate payroll remittances or insufficient payroll remittances to CRA
- Individuals fulfilling a position, role or function that would ordinarily be that of an employee being paid through other than the SAP payroll system
- Contracts or offers of employment are not approved in accordance with established policies and delegated authorities
- Individuals other than officers of the Civil Service Commission are extending offers of employment
- Conflicts of interest are not appropriately disclosed
- Departments have not effectively implemented their own policies and processes

The review emphasized policies applicable to employment contracts and interchange and secondment agreements, namely:

- CSC's Principles & Policies for Managing Human Resources section 2.1.0 Staffing Methods and 3.2.1 Conflict of Interest
- GMA sections 1.1 Delegation of Power and Authority, 1.2 General Approvals, 1.3 Contracts Central Management and 3.0 Human Resources
- FAM section 8B-2.21 – Contract with Self-Employed Individuals
- Applicable policies and processes used by the Department of [REDACTED]

The approach and procedures for this review consisted of:

- A review of policies and processes, including checklists, used to assess and identify the underlying nature of contracts (i.e. employment or services)
- A review of the delegated authorities and contract approval policies and processes
- A review of the new vendor setup process
- A review of the contract payment approval process
- Enquiry, interviews and discussions, review of pertinent documents, and other such tests and procedures considered necessary

## **BACKGROUND**

Over the past several years, the Canada Revenue Agency (CRA) has ruled a number of “self-employed contractors” are in fact “employees” in accordance with its directives. There have also been interchange agreements (sometimes referred to as secondment

agreements, although they pertain to arrangements with individuals and organizations external to core government) signed on behalf of the Manitoba Government (and potentially by deemed employees) that do not comply with CRA “self-employed contractors” directives.

There is a significant risk to the Government of Manitoba, from both a financial and reputational perspective, when individuals are designated in error as contractors instead of employees. The deemed employee may be eligible for benefits such as pension, insurance and EI claims that the Government of Manitoba may then be responsible for.

Section 8B-2.21 (Contract with Self-Employed Individuals) of the Financial Administration Manual (FAM) outlines the CRA’s requirements for determining whether an individual should be deemed an employee or a contractor.

If the individual fulfills a Government of Manitoba position, role or function that would ordinarily be that of an employee, the appointment should follow the Civil Service Commission (CSC) hiring practices. Only a delegated staffing authority within the CSC can authorize a staffing action.

Agreements not deemed an offer of employment must follow contract approval policy and procedures outlined in the General Manual of Administration (GMA).

In June of 2016, the Office of the Provincial Comptroller (OPC) and the CSC issued a joint memorandum to all Deputy Ministers requesting copies of all interchange and secondment agreements. Based on the evidence gathered, only the Department of [REDACTED] had entered into interchange and secondment agreements with individuals and organizations external to core government.

The OPC’s review of the interchange and secondment agreements identified by [REDACTED] revealed six interchange agreements with five organizations with a number of compliance concerns regarding the self-employed contractors vs. employee/employer relationship assessment, conflicts of interest, and acting within delegated authorities. A summary of the six interchange agreements is provided in Appendix A.

The CSC sent confirmation requests to the five organizations requesting confirmation that the required statutory employee related deductions were remitted to CRA and the amounts remitted. The OPC staff performed an assessment of compliance with CRA required remittances.

## **ACKNOWLEDGEMENT**

We wish to thank the management and staff at [REDACTED] for the cooperation and assistance provided to us during this review.

## EXECUTIVE SUMMARY

Our review evidenced that the Office of the Provincial Comptroller (OPC) took reasonable steps to identify interchange agreements (IA) with individuals external to core government and in concluding on the financial liability specific to CRA statutory remittances.

Unique identifiers or codes do not exist in SAP to readily identify IAs, which limits the ability to create a complete listing of all IAs issued within the Government of Manitoba (GoM). As a result, the OPC requested a listing of all IAs from all departments.

The OPC determined that five individuals under IAs (IA workers) within the Department of [REDACTED] had an employee/employer relationship with the GoM. However, given the wording within the IAs, the employee/employer relationship could be interpreted differently for different purposes. A CRA ruling may be required to provide certainty.

Our review revealed the FAM Checklist does not readily apply to IAs and there is inconsistent knowledge at the management level regarding its application. The FAM Checklist, used to determine whether workers are independent contractors or employees of the GoM, was not completed for the IAs under review. Improvements to the FAM Checklist and communication of said improvements would enhance the appropriate and consistent use of the FAM Checklist.

The OPC's identification of statutory payroll deductions remitted to the CRA by the IA organizations was reasonable. Based on the confirmation responses, only three of the five IA workers had appropriate CPP and EI withholdings. The GoM should include clauses in future standardized pre-approved IA templates allowing the GoM to confirm amounts remitted for IA workers and requiring detailed invoices supporting salary and other costs.

Corporate and departmental policies and procedures should support the GoM in managing risk. Throughout the course of the review, we determined there were a significant number of issues resulting in offers of employment (a staffing action) being extended by other than the Civil Service Commission (CSC) via IAs, and without the proper approvals. Actions could be viewed as misaligned with the GoM's publicly stated goals of fiscal restraint and tax fairness, the GoM's values of fairness, equity, openness and transparency, and with the GoM's values and ethics policy.

A strong educational effort is required to enhance staff understanding of IAs, their use, required approvals and disclosures, and the differences from other staffing options, including secondment agreements. Changes to corporate and departmental policies and procedures are also required. The use and administration of IAs requires significant change.

Overall, policies and procedures related to the proper use and authorization of IAs require improvement. Corporate and departmental policies and controls have been circumvented. A lack of appropriate monitoring controls led to offers of employment being issued by other than the CSC, to non-public sector organizations, and in most instances without the CSC's knowledge or involvement.

IACS reviewed the use of IAs and found their use to be against GoM's standards for open and transparent hiring practices. It is expected the CSC conducts itself in accordance with the highest standards and recognizes its interactions and decision-making serve as examples for all of the civil service.

One IA for a regular position was facilitated by the CSC; however, it is likely leading to an increasing financial liability for the GoM as the relationship is that of an employee/employer for tax purposes and the IA worker is currently being treated as an independent contractor. In addition, this IA was granted after a competitive process to the successful candidate of the competition when the successful candidate did not want to become an employee of the GoM and requested the IA, wanting instead to remain an employee of their current employer.

Within [REDACTED] the former Deputy Minister and the former Assistant Deputy Minister did not follow corporate and departmental policies and procedures, resulting in the approval of IAs without involvement and review by the CSC or Civil Legal Services (CLS) as required by the GMA. The IAs with the organizations listed in Appendix A used multiple contract templates and did not contain expected terms and conditions common to other contracts that protect the GoM's interests.

One IA was authorized by the former Assistant Deputy Minister; the former Assistant Deputy Minister did not possess such authority.

Of the eight IAs reviewed, six required TB approval. Only two of the six IAs were submitted to TB for approval.

Five of the eight IAs were approved after the effective start date.

The former Assistant Deputy Minister also overrode departmental internal controls designed to review contracts for completeness, accuracy, appropriate authorization and compliance with reporting requirements.

Our review found that none of the IA workers with compensation of \$50,000 or more are disclosed in the schedule of public sector compensation included in the 2015/16 Public Accounts Volume 2: Supplementary Information.

The IAs, however, are disclosed in the statement of consolidated payments in excess of \$5,000 to corporations, firms, individuals, other governments, and government agencies

included in the 2015/16 Public Accounts Volume 2: Supplementary Information.

Our review found that none of the IAs are listed on the [redacted] website for voluntary public disclosure of contracts greater than \$10,000.

Conflicts of interest (COI) declaration forms were obtained for two of the five IA workers. COI declarations for one employee did not contain adequate documentation of management's assessment of the employee's plan to address the declared COI, and the other employee did not declare a COI for shareholdings in a company that provided contracted services to the GOM.

Given the high level positions held by the IA workers and the level of transparency required while working in the public sector, COI declarations should have been accurately completed. It is important that all employees, temporary or permanent, act and be perceived to act in a manner that does not result in undeclared or unmanaged conflict of interest situations.

During and following the completion of our fieldwork, additional IAs were identified by the OPC and departments, and brought to the attention of the Provincial Comptroller. Although subsequent to the completion of our fieldwork and outside the scope of this review, we had discussions with the Provincial Comptroller and noted risks related to the use of IAs continue.

[redacted] has made progress to restrict the use of IAs within the department by working with the CSC to strengthen the controls related to the potential use of IAs and the staffing action process in general. Further efforts are required by all stakeholders to ensure the inappropriate use of IAs is discontinued and policies and processes are aligned with the GoM's values.

The following sections provide further information and details on our observations and recommendations. A separate summary of recommendations is provided for ease of reference.

## **SUMMARY OF RECOMMENDATIONS**

The following provides a summary of the recommendations that should be implemented to improve interchange policy procedures and control weaknesses.

### **Employee/Employer Relationship**

We recommend:

- OPC, in consultation with CLS, obtain a tax ruling from the CRA for one IA
- OPC, in consultation with CLS, use the lessons learned from the CRA ruling to establish standardized IA terms and conditions and best practices
- CLS develop a standardized pre-approved IA template for future CSC use
- CSC ensure the IA template is used for all future IAs, and any changes to the template or terms and conditions require CLS approval
- OPC review the FAM guidelines for consistency with lessons learned from the CRA ruling
- OPC review and modify the FAM Checklist to enhance its applicability to circumstances specific to IAs, or develop a separate checklist specific to IAs. All changes should be communicated to all potential users.
- CSC and the OPC review the information obtained from [REDACTED] with CLS to determine the next course of action

### **Contract Approval and Hiring Practices**

We recommend:

- TBS, in consultation with the CSC and OPC, provide a clear definition of an interchange agreement, the type of contract (employment) interchange agreements represent, the required disclosures, and guidance on the appropriate use of interchange agreements as a staffing action, and include such in the GMA
- CSC ensure the Principles & Policies for Managing Human Resources specifically state the use of interchange agreements with non-public sector organizations is prohibited
- CSC update the CSC Appointment Matrix policy references
- TBS, the CSC and the OPC educate staff on interchange agreements, staffing authorities, required approvals, and required disclosures, both regulatory and voluntary
- CSC, in collaboration with CLS, update the standardized IA templates to include

clauses relating to:

- allowing the GoM the right to confirm statutory remittances made by the Agency on behalf of the IA worker
- clarifying the party responsible for the withholding and payment of all employee payroll deductions
- GoM indemnity
- confidentiality
- conflict of interest
- The GoM only approve for payment detailed invoices that itemize the portion for salary, benefits, pay levy or other costs contained in the IA
- The breakdown of base salary, benefits and any other costs outlined in the IA be detailed on all IA invoices, and the requirement for detailed invoices be added to the terms and conditions of all IAs
- CSC and TBS standardize the required Staffing Authorization Request approvals
- CSC update its policies and procedures to require following up approved Staffing Authorization Requests with departments
- TBS modify the GMA to clearly indicate that only the CSC can issue letters of offer and perform staffing actions, and that interchange agreements are employment contracts
- ██████████ modify its policies and procedures to ensure all contracts, including IAs, receive proper central departmental review and communicate the modified policies and procedures to all staff
- The Office of the Clerk of the Executive Council , in consultation with CLS, assess the impact of management's override of internal controls in relation to the GoM's Values and Ethics Policy and on the desired corporate control culture, and determine the next course of action
- TBS remind all departments of the contract review requirements
- TBS remind all departments that IAs are employment contracts that require CSC involvement, CLS review, and consultation with the Labour Relations Division of TBS to ensure department policies and procedures reflect the following:
  - all contracts or standard pre-approved contract templates, including IAs, are to be approved by CLS
  - all staffing actions require CSC authorization and monitoring

- contracts for all contract employees, including IAs, are to be discussed with the Labour Relations Division of Treasury Board Secretariat
- The Office of the Clerk of the Executive Council, in conjunction with the OPC, implement a tip line for senior financial staff or other staff feeling pressured to circumvent or ignore critical internal controls, and for staff witnessing such occurrences
- Proactive completion of the FAM Checklist by departments and requiring the completed FAM Checklist as supporting documentation for the setup of all new vendors and the approval of all IAs
- TBS, in coordination with CSC and the OPC, modify departmental employing authority to specifically exclude IAs and ensure said changes are made on all delegation of signing authority charts
- Departments ensure TB approval is obtained for all IAs for all senior management positions regardless of whether it is a regular or an acting appointment, consistent with the GMA
- TBS clearly define “senior management” within the GMA
- IAs only be approved by the appropriate signing authority after the required TB approval has been received
- TBS reinforce with departments that all IAs must be approved in accordance with the GMA, and prior to the effective start date
- TBS and the OPC reinforce with departments that vendor invoices that are not supported by an approved contract should not be approved for payment
- CSC and [REDACTED] coordinate their efforts to end the permanent IA
- CSC ensure all IAs are temporary in nature
- CSC demonstrate compliance with the CSC Policy for difficult to recruit positions
- CSC only enter into IAs with public sector organizations
- CSC amend its procedures to support compliance with the CSC Policy
- CSC engage CLS to develop and approve terms and conditions specific to IAs, and develop a standardized pre-approved template for IAs. Any future changes or alterations to the standardized template would require CLS approval

## **Conflicts of Interest**

We recommend:

- CSC reaffirm procedures ensuring all sections of the COI form are completed, including employee plans to address declared COIs and subsequent management assessment regarding resolution of the COI
- CSC reaffirm the requirements of the Provincial Conflict of Interest Policy and communicate such to all departments to improve awareness and understanding
- CLS, in coordination with the CSC, include COI clauses in the standardized IA template

## **DETAILED OBSERVATIONS AND RECOMMENDATIONS**

### **1.0 EMPLOYEE/EMPLOYER RELATIONSHIP**

#### *Objective:*

To assess the reasonableness of the steps taken by the OPC in identifying interchange and secondment agreements with individuals and organizations external to core government and in assessing and concluding on the Manitoba Government's financial liability specific to CRA employment deductions and statutory remittances.

#### **1.1 Identification of Interchange and Secondment Agreements**

##### *Criteria:*

Steps taken by the OPC support the complete identification of interchange and secondment agreements with individuals and organizations external to core government.

##### *Conclusion:*

Overall, the OPC took reasonable steps to identify interchange and secondment agreements given the SAP data limitations.

##### **1.1.1 No Unique SAP Identifiers for Interchange Agreements**

IACS discussed and reviewed the steps taken by the OPC to support a complete identification of interchange and secondment agreements with individuals and organizations external to core government. The OPC indicated a specific code within SAP has not been consistently assigned to interchange agreements (IA). Although an IA code exists within the Human Resource module, the use of the IA code is inconsistent, limiting the ability to create a complete listing of all IAs for the Government of Manitoba (GoM).

The consistent use of a specific code for IA contracts (or other unique identifier) in SAP could facilitate the generation of IA contract listings, thereby enhancing the ability to perform an efficient and effective analysis of all IAs.

As SAP could not be used to identify all IAs, the OPC issued a memorandum to all departments requesting they review all existing contracts for IAs with non-public sector organizations and submit their listing to the OPC. The OPC also used the memorandum as an opportunity to educate departments on the CRA directives, and stated that the OPC would coordinate a review of the identified IAs for compliance with the CRA rules. Given the SAP limitations noted above, this process is reasonable; however, there is minimal comfort that the listing of IAs is complete as it relied on individuals' historical knowledge and understanding in the identification of IAs.

Once the OPC received all departmental responses, the OPC reviewed the listing for IAs and concluded six IAs with five individuals (listed in Appendix A) issued within the Department of ██████████ required further review for proper classification of employee or self-employed contractor in accordance with CRA directives. During the course of this review, we identified two additional IAs with individuals listed in Appendix A.

Overall, the process used by the OPC was reasonable given the data limitations within SAP. Consideration could be given to consistently assigning unique identifiers to IA contracts and developing specific reports in SAP for IAs in both the Finance and Human Resource modules; however, it should be noted the effectiveness of unique identifiers in SAP for IAs is still dependent on an individual's knowledge and understanding of IAs and the correct use and assignment of the unique identifiers at the outset. As noted in section 2.1.1, the knowledge and understanding of IAs, and the identification of IAs as part of the contract approval process, are weak.

During and following the completion of our fieldwork, additional IAs were identified by the OPC and departments.

## **1.2 Employee/Employer Relationship**

### *Criteria:*

OPC's procedures and control activities support the proper classification of employee/employer in accordance with the FAM and CRA requirements for determining whether an employee or a contractor relationship exists.

### *Conclusion:*

The analysis performed by the OPC was reasonable and consistent with CRA and FAM guidelines for determining whether an employee or a self employed contractor relationship exists. The risk remains that the GoM may be liable for the statutory remittances and other employee benefits; further consultation with Civil Legal Services (CLS) and a CRA ruling are recommended.

### **1.2.1 Assessment of Employee vs. Contractor**

The OPC's analysis deemed all IA workers as employees of the GoM; however, the application of the CRA checklist requires judgement and many of the IA terms and conditions can be interpreted for different outcomes and ultimately would require a CRA ruling to provide certainty.

#### *CRA Guidance*

We reviewed the CRA guidance for determining employment status. The CRA guidance states employment status is important as it directly affects a person's entitlement to

Employment Insurance (EI) and Canadian Pension Plan (CPP) benefits and treatment under the Income Tax Act. Employers are responsible for deducting and remitting both the employer and employee's share of CPP contributions, EI premiums, and income tax from remuneration (or other amounts) paid to employees.

In instances where the employer fails to deduct the required CPP contributions or EI premiums, the employer has to pay both the employer's share and the employee's share of any amounts owing, plus penalties and interest.

#### *Federal Policy on Interchange Canada*

We also reviewed guidance from the Treasury Board of Canada Secretariat on the use of IAs. Interchange Canada is an exchange program between the core federal government and other organizations in private, public and not-for-profit sectors. The policy supports temporary assignments, resulting in employee professional development and organizations benefiting from new knowledge, skills and approaches. The federal policy indicates employees on IAs are on temporary assignment with the "Host" organization (in this case the GoM) and therefore remain employees of the "Agency" (the sponsoring organization).

Based on this guidance, individual workers on IAs would be temporarily assigned to the GoM and would remain employees of the Agency. The Agency would be responsible for remitting the payroll deductions and paying other employee benefits (e.g. pension and vacation leave).

#### *CRA Employer's Guide for Payroll Deductions*

We also reviewed CRA's Employer's Guide for Payroll Deductions and Remittances which states the following in relation to employment agencies:

*"When an agency places workers in an employment under the direction and control of a client of the agency and the agency pays the worker, the agency has to deduct CPP contributions and EI premiums, but not income tax. The agency has to prepare a T4 slip for the worker."*

Under this scenario, the Agency would be responsible for the CPP and EI deductions.

The organizations identified in Appendix A are not known to be employment agencies; however, the principle of placing a worker under the direction and control of a Host organization is a common term and condition for the IAs.

#### *Application of the CRA Checklist*

IACS applied the CRA checklist to the IAs and noted, consistent with the OPC's findings, all the IAs indicate an employee/employer relationship. However, application of the CRA checklist requires judgement and many of the IA terms and conditions are unclear; a

position supporting an independent contractor relationship could be taken.

The OPC should contact CLS to further review the IAs and if deemed appropriate, obtain a ruling from the CRA. Although the relationship between the GoM and the IA workers identified in Appendix A would likely be that of employee/employer, only a CRA ruling can provide certainty going forward. The process could begin with one IA to ultimately determine the responsibility for remitting payroll deductions, and the need for further rulings reassessed at that point. Regardless of the outcome, lessons learned from the CRA ruling should be used to reaffirm and create standardized pre-approved IA templates, contract terms and conditions (see section 2.4.4 on CLS review and approval), and establish best practices to be used by the CSC and all departments.

Lessons learned from the CLS review, and CRA ruling if deemed appropriate, should be incorporated into the CSC policies and procedures, the GMA, and the FAM section 8B-2.21.

*Recommendations:*

*We recommend:*

- i) OPC, in consultation with CLS, obtain a tax ruling from the CRA for one IA*
- ii) OPC, in consultation with CLS, use the lessons learned from the CRA ruling to establish standardized IA terms and conditions and best practices*
- iii) CLS develop a standardized pre-approved IA template for future CSC use*
- iv) CSC ensure the IA template is used for all future IAs, and any changes to the template or terms and conditions require CLS approval*
- v) OPC review the FAM guidelines for consistency with lessons learned from the CRA ruling*

*Management Comments:*

- i) Agree. The CRA ruling has been obtained and confirmed that the individual in question is an employee.*
- ii) Agree. In collaboration with the CSC, the CRA ruling will be considered as part of the staffing policy update, and in the development of an IA template and process document.*
- iii) Agree. As IAs are recruitment instruments, the CSC is in the process of developing an IA template for review and approval by Legal Services Branch (LSB). There may need to be flexibility for the Government of Canada's agreement templates.*
- iv) Agree. The CSC's policy 2.1.0 Staffing Methods is currently under review and will include a link to the approved template.*

*Clear instruction will be provided with respect to the requirement to use the template provided, as well as the requirement to engage LSB for approval should any changes to the template or the terms and conditions be made.*

- v) *Agree. Changes to the FAM can proceed in parallel to obtaining the CRA ruling but dependent on the work CSC is undertaking to revise policy 2.1.0. This is also dependent on actions taken/to be taken to action recommendations 2.1.2(i), (ii) and (iv) and may result in changes to the GMA and PAM.*

## **1.2.2 Knowledge and Use of FAM and CRA Checklists**

We reviewed the FAM Checklist and the CRA checklist and noted the assessment criteria between the two checklists are consistent. Our review identified neither the FAM Checklist nor the CRA checklist can be naturally applied to IAs. Our review also evidenced inconsistent degrees of knowledge at the management level regarding the application of the FAM Checklist.

Both the FAM and CRA checklists are useful in determining whether an individual is an employee of an organization or a self-employed worker. However, this relationship is not relevant to scenarios involving IAs as the individual providing the service to the Host organization is already a known employee of the Agency organization.

The required analysis is whether the individual subject to the IA is an employee of the GoM or the source Agency. Some factors to include in this analysis include:

- Will the salary and benefits of the individual remain consistent after the term of the interchange agreement?
- Is the engagement temporary and related to staff development or a specific project?
- Does the individual occupy a government position?
- Does the agreement specify the Agency is responsible for the CRA remittances based on the salary paid by the Agency?
- Is the individual providing the service at arm's length with the Agency?
- Do the employee and related individuals have significant ownership interest in the Agency?

Adding the above factors to the FAM Checklist, or creating a separate IA checklist, would improve the overall analysis and increase the likelihood of the correct determination of the appropriate tax relationship (employee of the Agency or employee of the GoM) and which party is liable for the withholding and remittance of the payroll deductions.

Sections 2.1.2 and 2.4.3 identify that the CSC Policy restricts IAs to other public sector organizations. If the CSC Policy was being followed and the IAs were restricted to other

public sector organizations, the recommended changes to the FAM Checklist may not be required.

*Recommendation:*

*We recommend the OPC review and modify the FAM Checklist to enhance its applicability to circumstances specific to IAs, or develop a separate checklist specific to IAs. All changes should be communicated to all potential users.*

*Management Comments:*

*Agree. OPC will revise the FAM as required. However, it is recognized that if the cases audited applied the CSC definition of interchange correctly and followed staffing policies and procedures, the checklist would not have been needed.*

*Procedure documents under development by the CSC will link to the new or revised checklist for IAs and will clearly indicate that IAs are staffing actions.*

*Changes will be communicated to the various stakeholders (deputy ministers, financial officers and human resource practitioners).*

### **1.3 CRA Statutory Employment Remittances**

*Criteria:*

Steps taken by CSC and OPC support the complete identification of required statutory deductions and statutory deductions remitted to CRA.

*Conclusion:*

Overall, the steps taken by the OPC support the complete identification of required statutory deductions and statutory deductions remitted to the CRA, and were reasonable given the circumstances.

The CSC and OPC should develop processes to help the GoM identify and monitor IAs more effectively, and to enable and require proactive departmental assessments of the required statutory remittances.

#### **1.3.1 OPC Confirmation of Remittances**

To assess the steps taken by the OPC to support the complete identification of required statutory deductions and statutory deductions remitted to CRA, we interviewed staff within the Department of Finance and the CSC.

The OPC issued confirmation requests to the IA Agencies requesting confirmation of the payroll deductions made by the Agency during the contract period. Once all parties had responded to the confirmation, the OPC reviewed the information and compared the responses to expected statutory deductions and remittances.

We reviewed current CRA guidance on CPP and EI withholdings and remittances, and the confirmations received by the OPC. Our analysis indicated that three of the five individuals under IAs had appropriate CPP and EI withholdings.

The following two exceptions were noted:

1.

responded that the IA worker is a shareholder of and did not receive a salary. Rather, the monies paid by the GoM to were included in the income of and then paid as shareholder dividends, and therefore, no payroll remittances were required. This treatment of the monies paid to s contrary to the terms of the IA.

The IA with states the GoM shall “*Continue to pay the employee salary and benefits, as if continued to work throughout the term of this Agreement with the Agency*”. The above implies the IA worker was previously receiving a salary ( plus benefits) from and would continue to receive a salary during the work term. The IA also states the IA worker would be returned to the same position with after the IA term ended.

treatment of the payments received is inconsistent with the terms of the IA. Should the CRA determine the existence of an employee/employer relationship between the IA worker and the GoM, the GoM could be liable for all statutory remittances.

2.

esponded by stating: “*No CPP or income tax was deducted from (employee’s) gross pay in 2015, as we understood (employee) is a Status Indian working on Reserve. Similarly, no income tax was deducted from gross pay in 2016; however, (employee) opted for CPP in 2016.*”

The OPC determined the IA was for the Assistant Deputy Minister (ADM) position and the individual would not be working on Reserve for a significantly long enough period to justify 100% exemption of employment income for payroll remittances. Further analysis determined Status Indians employed by the GoM would need to fall into one of the following categories to be 100% exempt:

- the employee would have to live on Reserve and work there more than 50% of his/her time
- the employee would have to work on Reserve for more than 90% of his/her time if he/she does not live on the reserve

The OPC reviewed the work [REDACTED] and concluded the likelihood the worker's employment income would be exempt from CPP and income tax was marginal. The GoM could be liable for all statutory remittances should the CRA determine the existence of an employee/employer relationship.

The CSC and OPC should seek input from CLS on how to proceed with the knowledge that:

- payments made to an Agency were treated in a manner other than as defined in the IA
- a worker involved in an IA has claimed on Reserve status when the position with the GoM is not on Reserve

Although the information obtained regarding working and living on Reserve appears to lead to an incorrect exemption for payroll remittances and raises concern with the GoM Values and Ethics Policy, this information was obtained via voluntary confirmation and the legalities of using that information for other purposes is unclear.

Based on our review and the analysis performed by the OPC, it is likely that the GoM is liable for the statutory remittances unless the Agencies otherwise agree to remit.

The CSC and OPC should contact CLS for further review of the IAs, the required statutory remittances, the impact on the GoM's Values and Ethics Policy, and a possible ruling from the CRA (see recommendations in section 1.2.1).

*Recommendation:*

*We recommend the CSC and the OPC review the information obtained from [REDACTED] with CLS to determine the next course of action.*

*Management Comments:*

*Agree. OPC, CSC and LSB investigated the information. LSB was unable to determine ownership or nature of business of [REDACTED] Based on the risks and concerns identified, OPC will issue letters to the organizations and employees.*

## **2.0 CONTRACT APPROVAL AND HIRING PRACTICES**

Objective:

To assess whether policies and procedures ensure the proper authorization of letters of offer and contracts for services, in accordance with government policy.

## 2.1 Nature of the Contract

### *Criteria:*

Contract approval policies and procedures clearly define the differences between employment and other contracts.

### *Conclusion:*

Contract approval policies distinguish between the approvals required for employment contracts and for other contracts; however, the GMA is silent on interchange agreements. The GMA does not specifically include, refer to, or define IAs, and consequently, the required approvals.

Guidance as to what an IA is, the type of contract an IA represents (employment), and when it is appropriate to use an IA is missing.

Our review found the GMA and CSC policies provide inadequate direction on the use of and approval required for IAs.

### 2.1.1 Employment vs Other Contracts

#### *Employment Contracts*

Differentiating circumstances and the required approvals for employment contracts are detailed in sections 1.3 Contracts and 3.1 Staffing of the GMA; however, there is no reference to IAs in the GMA.

Section 1.3 Contracts of the GMA also does not provide guidance in assessing when an employment contract would exist versus another type of contract. The GMA Glossary of Terms provides some additional guidance; however, the glossary only defines a contract employee, independent contractor, and employer/employee relationship. The glossary does not define an IA.

Section 1.3 Contracts of the GMA states that employment contracts must be approved by “the Minister or a delegated Employing Authority at the director level...”. Section 3.1 Staffing of the GMA identifies additional levels of approval required for appointments to higher-level positions; as an example, an OIC is required for appointments to positions of ADM or higher.

The [redacted] delegated financial signing authority (DFSA) chart clearly identifies that Department Head (C1) employing authority is required to approve direct appointments, secondment agreements, and IAs. Per the [redacted] DFSA chart, this authority has only been delegated to the Deputy Minister (DM). The required authority and the delegation of this authority only to the DM was also confirmed by management.

## *Other Contracts*

The GMA does define the fundamental differences between and the required approval levels for goods and services contracts, and consulting and professional services contracts. Specific approvals required for goods and services contracts, and consulting and professional services contracts are also differentiated based on the dollar amount of the contract, whether or not the contract was tendered, and whether the low bid was accepted.

### **2.1.2 Definition of an Interchange Agreement**

Our review found the GMA and CSC policies provide inadequate direction on the use of and approval required for IAs.

We noted IAs are described within the CSC Principles & Policies for Managing Human Resources (CSC Policy) as temporary arrangements with public sector organizations.

A strong educational effort is required to enhance staff understanding of IAs, their use, required approvals and disclosures, and the differences from other staffing actions, including secondment agreements.

#### *GMA*

The GMA does not include, refer to, or define IAs, and consequently, the required approvals. Guidance as to what an IA is, the type of contract an IA represents (employment), and when it is appropriate to use IAs is not included.

We identified in sections 2.2.3, 2.3.2 and 2.3.4 that staff do not readily understand the difference between IAs and other staffing actions, including secondment agreements, or the required approvals and disclosures for IAs.

GMA section 3.1 Staffing references the CSC Policy.

#### *CSC Principles & Policies for Managing Human Resources*

CSC Policy section 2.1.0 Staffing Methods describes IAs as one type of temporary appointment in addition to acting status appointments, secondments, interim reclassifications, and casual employment.

CSC Policy section 2.1.0 defines an interchange as:

*“...the temporary assignment of regular employees within their staff year to work in another level of government. Interchanges are possible with the Government of Canada, another province, municipality, or other public sector organization.”*

The CSC Policy section 2.1.0 does not provide for IAs with non-public sector organizations or for non-temporary assignments.

## *CSC Appointment Matrix*

The CSC Appointment Matrix document is included in the CSC Staffing Toolkit.

The CSC Appointment Matrix extends the definition IAs to appointments outside the GoM from other areas of the public sector, and provides the following example, *“Federal Employee loaned through Interchange Agreement to Government of Manitoba (GoM) and paid by GoM”*.

We noted the Appointment Matrix references an outdated policy statement that is no longer part of the CSC Policy. CSC should review the CSC Appointment Matrix to ensure the listed review and approval processes are consistent with policy and current practice.

### *Recommendations:*

*We recommend:*

- i) TBS, in consultation with the CSC and OPC, provide a clear definition of an interchange agreement, the type of contract (employment) interchange agreements represent, the required disclosures, and guidance on the appropriate use of interchange agreements as a staffing action, and include such in the GMA*
- ii) CSC ensure the Principles & Policies for Managing Human Resources specifically state the use of interchange agreements with non-public sector organizations is prohibited*
- iii) CSC update the CSC Appointment Matrix policy references*
- iv) TBS, the CSC and the OPC educate staff on interchange agreements, staffing authorities, required approvals, and required disclosures, both regulatory and voluntary*

### *Management Comments:*

- i) Agree. The recommendation will be reflected in the 2.1.0 Staffing Methods policy currently under review, as well as in a procedures guide pertaining to secondment and IAs under development.*

*Based on the clarification that IAs are staffing actions, TBS, in partnership with the CSC, will update the GMA and related processes, referring to CSC policies and procedures as appropriate.*

*OPC will revise the FAM coordinated with the GMA and recommends investigating if PAM changes are needed to sections that speak to contracts.*

- ii) Partially Agree. The CSC agrees with the audit findings relating to this recommendation. However, in consideration that government may be interested in engaging expertise from private industry, the CSC is re-evaluating the 2.1.0 Staffing*

*Methods policy.*

*The CSC will consider, through consultation with LSB and OPC, CRA rules, requirements relating to public sector compensation disclosure in the IA template and the GoM's risk exposure.*

*iii) Agree.*

*iv) Agree. The CSC and OPC are committed to ensuring awareness and understanding of requirements with respect to IAs. Communication strategy will include deputy ministers, executive financial officers (EFOs), senior financial officers (SFOs), and human resource management.*

*In addition, the OPC will review the existing mandatory requirements to complete the five Comptrollership Modules with a view to include CSC staff and other relevant positions that it may benefit.*

*A working group with representatives from CSC, OPC and TBS will be established to address the shared recommendations.*

### **2.1.3 Standardized Interchange Agreement Templates**

The GoM should improve its ability to request confirmation of statutory payroll remittances and withholdings for IAs by including a clause allowing the GoM to confirm amounts remitted by the Agency for the IA worker. Without a specific clause, the GoM is relying on the Agencies to voluntarily disclose the requested information. Going forward, the standardized IA template should be revised to include the following principles:

- The GoM has the right to confirm any and all statutory deductions made by the Agency on behalf of the employee for salaries and benefits paid for the duration of the IA
- The Agency will be responsible for the withholding and payment of all taxes and other assessments and benefits, including but not limited to, Canada Pension Plan, Employment Insurance, federal and provincial income taxes, and Workers Compensation relating to the IA worker during the term of the IA

The addition of these principles in the IA would ensure the GoM has the ability to confirm payments and remittances, and that the Agency is ultimately responsible for the withholding and payment of required remittances.

Additionally, when reviewing the IAs, we noticed two IAs did not include indemnification clauses. These clauses are common in temporary employment agreements and companies use them to protect themselves against third party lawsuits. Other expected clauses that were either not included in the IAs or did not contain the level of detail commonly reflected in GoM contracts were confidentiality and conflict of interest.

Overall, a review of the IAs by CLS would have identified the inconsistencies between the IAs and the weaknesses in the IAs that left the GoM at risk for future liabilities.

*Recommendations:*

*We recommend the CSC, in collaboration with CLS, update the standardized IA templates to include clauses relating to:*

- i) allowing the GoM the right to confirm statutory remittances made by the Agency on behalf of the IA worker*
- ii) clarifying the party responsible for the withholding and payment of all employee payroll deductions*
- iii) GoM indemnity*
- iv) confidentiality*
- v) conflict of interest*

*Management Comments:*

*Agree. A standardized IA template is being developed and will be vetted through LSB. The CSC agrees with the recommended clauses and notes that interchanges will be a four-party agreement (with the employee and the CSC included as signatories). Agreements will also include requirements for the employee to be familiar with key corporate policies (e.g. Conflict of Interest Policy, Employee Network Usage Policy, Values and Ethics Guide, etc.).*

#### **2.1.4 Interchange Agreement Invoice Details**

We reviewed the IAs with the Agencies listed in Appendix A and noted that with the exception of one IA (Employee 5, [REDACTED]) GoM payments were made to the Agency based on invoices. The IAs also included a clause stating that the GoM would reimburse the Agency for employee benefits, and in some instances a “pay levy”, at a rate of either 15% or approximately 15% of base salary.

We reviewed a sample of invoices related to the IAs and noted several of the invoices had no delineation between the salary amount and the additional pay levy and benefit costs. The lack of detail on the Agency invoice prohibits the GoM from determining what costs the invoice represents. IA invoices should detail specific costs related to the amount of base salary, benefits and any other costs in accordance with the terms and conditions contained in the IA.

Detailed costs on the IA invoice will provide the GoM an opportunity to recalculate the itemized costs to ensure they are aligned with the IA terms and conditions and prevent any possible under or over payments in relation to the IA. The breakdown of the costs

can also be included as a specific condition as part of the development of the standardized IA template recommended in section 2.1.3.

*Recommendations:*

*We recommend:*

- i) the GoM only approve for payment detailed invoices that itemize the portion for salary, benefits, pay levy or other costs contained in the IA*
- ii) the breakdown of base salary, benefits and any other costs outlined in the IA be detailed on all IA invoices, and the requirement for detailed invoices be added to the terms and conditions of all IAs*

*Management Comments:*

- i) Agree. As an extension to the recommendations to review FAM policies and procedures, and CSC development of an IA template, OPC commits to communicate and educate staff on the policy/procedure changes including the development of an FAIC on this topic as needed.*

*The requirement for detailed invoices as listed in this recommendation and recommendation 2.1.4(ii) below, will be captured in the IA procedural document and IA template, currently in development by the CSC.*

- ii) Agree. As above (2.1.4(i)).*

## **2.2 Offers of Employment**

*Criteria:*

Policies and procedures, including departmental policies, prevent and detect letters of offer being extended from outside the CSC.

*Conclusion:*

Policies and procedures surrounding the staffing process and the issuance of letters of offer do exist. However, to prevent and detect letters of offer being extended from outside the CSC, proactive involvement of the CSC and the involvement of the CSC throughout the staffing process are required.

When departments do not directly involve the CSC in the staffing process, strong controls to prevent or detect letters of offer being issued from outside the CSC do not exist.

The CSC does not proactively follow up to determine how approved staffing requests are filled. Proactive follow up could prevent or detect inappropriate staffing actions and the issuance of letters of offer by departments.

## 2.2.1 Staffing Request Forms

The initial step in the staffing process is completion and approval of a Staffing Submission form, commonly referred to as a Staffing Authorization Request (SAR) form, and also known as a Staff Requisition Form.

### *Inconsistent Authorization Levels*

We reviewed a sample of SARs with a CSC representative and noticed the signing authority required differs between departments. On some SARs the highest signatory was ADM, whereas on others the highest signatory was DM.

Standardization of the SAR approval requirements would ensure an equitable level of approval across the GoM and provide clarity for staff on the required approvals, regardless of staff turnover or potential department portfolio changes.

### *CSC Follow Up on Approved SARs Not Required*

Discussions with the CSC representative also identified the CSC is not required to follow up with departments to determine how or when positions are filled. The department's CSC representative approves the SAR. However, no policies or procedures require the CSC representative to follow up with the department to determine how or when the approved SAR will be filled. Such a requirement would serve as a preventive or detective control; without such a requirement, the risk of departments extending a letter of offer increases.

IACS acknowledges that following up every approved SAR could require significant resources, and supports the establishment of follow up procedures based on predetermined criteria, such as sampling (e.g. one of every four approved SARs), the passing of time (e.g. one month), or position thresholds (e.g. executive level).

### *Recommendations:*

*We recommend:*

- i) CSC and TBS standardize the required Staffing Authorization Request approvals*
- ii) CSC update its policies and procedures to require following up approved Staffing Authorization Requests with departments*

### *Management Comments:*

- i) Agree. The CSC and OPC agree to review the feasibility and impacts of a standardized SAR on departments.*

*There is benefit to standardizing documentation corporately, but these are currently department-specific forms requiring employing authority approval to carry out actions pertaining to employment of staff. The levels for signing authority are determined by*

departments.

*Development of a standardized SAR is also a project under the Lean Comptrollership Framework. A standard form has been developed for Finance that could potentially be used/adapted for use across the GoM.*

- ii) *Partially Agree. The CSC agrees with the audit findings related to this recommendation. However, departments, as employing authorities, have flexibility to defer filling positions that have been previously authorized. The CSC's role focuses on supporting the advancement and prioritization of authorized positions from a service delivery perspective.*

*The procedural guide for IAs and secondment agreements, currently being developed by the CSC, will clearly establish human resource staff as a required authority for IAs. This will eliminate any potential for departments to advance an IA for a role that has not been properly authorized. TBS, in partnership with the CSC, will update the GMA and related processes, referring to CSC policies and procedures as appropriate.*

## **2.2.2 Offers of Employment Extended Outside of the CSC**

Discussions with [REDACTED] and CSC representatives identified that branches within [REDACTED] distributed letters of offer for seven of eight IAs (see Appendix B) without CSC's active involvement. The CSC was only actively involved with the last IA for Employee 4 (contract start date [REDACTED]).

The CSC representative interviewed stated that in accordance with the GMA, the expectation is for departments to remain in contact with their assigned CSC representative throughout the staffing and recruitment process, and advise CSC how and when a position is filled.

The GMA states:

*'Staffing authority under the Civil Service Act is delegated to the Deputy Ministers and Human Resource professionals by the Civil Service Board, and the staffing process is monitored by the Civil Service Commission'.*

The typical hiring process is as follows:

- the department determines how the position will be filled (internally or externally)
- the SAR is approved
- a competition is posted
- applicants are screened
- an interview is conducted

- the successful candidate is chosen
- the CSC drafts the letter of offer
- the CSC extends the letter of offer to the successful candidate

The CSC representative is engaged throughout the typical hiring process, the CSC representative is aware of who the successful candidate is, and the CSC extends the letter of offer.

Interviews with [REDACTED] and the CSC indicated [REDACTED] filled positions by issuing letters of offer using IAs and did not involve the CSC beyond the initial SAR approval stage. The CSC was initially unaware that [REDACTED] had filled positions using IAs with the organizations identified in Appendix A.

It is possible that the signing authorities from [REDACTED] incorrectly classified the IAs as service or professional contracts and therefore did not involve the CSC. Had such a misclassification occurred, the contracts should then have been tendered; they were not. As identified in section 2.1.2, the specific inclusion of IAs in the GMA would provide the guidance necessary to staff to reduce misunderstandings and misclassifications.

The possibility was raised with us that [REDACTED] was trying to avoid CSC involvement in order to expedite the hiring process or use the IAs to fill positions with desired candidates outside the normal competitive hiring process and at rates greater than those established by the Labour Relations Division, Treasury Board Secretariat.

Regardless of the reasons, the CSC was not aware [REDACTED] had filled the positions with IAs. If a department wants to perform a staffing action, in any manner, the department is expected to involve the CSC. Inclusion of such a statement in the GMA, along with a statement indicating that only the CSC can perform staffing actions and specifically defining an IA as an employment contract requiring a staffing action as recommended in section 2.1.2, should decrease the risk of departments inappropriately issuing letters of offer via IAs or otherwise.

*Recommendation:*

*We recommend TBS modify the GMA to clearly indicate that only the CSC can issue letters of offer and perform staffing actions, and that interchange agreements are employment contracts.*

*Management Comments:*

*Agree. LSB has been asked to clarify whether an interchange agreement is considered an employment contract as defined by the GMA.*

*IAs are staffing actions and, as such, a Commission Officer or Delegated Staffing Authority authorizes staffing actions which includes issuing letters of offer.*

*It is important to note that exceptions apply for situations such as student hiring, or where individuals have obtained limited staffing delegation (for example, Sustainable Development employees with limited staffing delegation may issue letters of offer for departmental positions).*

*The IA template under review will be a four-party agreement (with the employee and the CSC included as signatories).*

### **2.2.3 Public Disclosure Requirements – Volume 2: Supplementary Information**

Volume 2 of the GoM's public accounts annual reports contains an audited report of all public sector compensation payments including benefits and severance payments of \$50,000 or more during the fiscal year. IAs are employment contracts to fill public sector positions; therefore, the expectation is that compensation paid to workers under IAs would be disclosed in the schedule of public sector compensation included in Volume 2.

We noted that the IA workers identified in Appendix A with compensation of \$50,000 or more are not disclosed in the schedule of public sector compensation included in Volume 2. Non-disclosure of all public sector compensation greater than \$50,000 is a direct violation of legislative requirements, and does not align with the GoM's values of openness and transparency.

Also included in Volume 2 is a statement of consolidated payments in excess of \$5,000 to corporations, firms, individuals, other governments, and government agencies. We noted that the IAs identified in Appendix A are disclosed in the statement of consolidated payments in excess of \$5,000 included in Volume 2. One of the five organizations was identified not by the organization name but by the name of the IA worker.

Further review and discussion with senior financial management within [REDACTED] identified the reason the IAs are not listed in the Volume 2 schedule of public sector compensation is that they are not considered employment contracts and the counterparty organizations were set up as trade vendors. The senior financial management within [REDACTED] noted the IA workers do not meet the definition of a civil servant since they are paid by the Agency and not the GoM. As identified in section 1.2.1, the payment of salaries and benefits is not necessarily the sole determinant of an employee/employer relationship.

As identified in section 2.1.2, a strong educational effort is required to enhance staff understanding of interchange agreements and the required disclosures.

## 2.3 Non-Employment Contracts

### *Criteria:*

Policies and procedures ensure the proper tendering and approval of non-employment contracts in accordance with GMA and CSC policies, inclusive of Treasury Board Secretariat review and approval.

### *Conclusion:*

GMA and CSC policies outline the proper tendering and approval of non-employment contracts.

The procedures in place in [REDACTED] do not ensure compliance with the GMA contracts policy as certain controls have been circumvented.

General tendering expectations for Consulting & Professional Services Contracts (GMA section 1.3) and purchases of Goods & Services (GMA section 1.2) are that departments tender contracts whenever possible, and that all purchases over \$5,000 require formal tendering. The GMA establishes approval thresholds for contracts segregated by dollar amount, tendered low bid vs. other than low bid, and untendered. Tendering policies do not apply to employment contracts.

The Procurement Administration Manual also provides guidance on the procurement process related to goods, services and construction contracts.

As the IA contracts are employment contracts, they were not tendered.

### **2.3.1 Lack of Effective Departmental Policies and Procedures**

GMA section 1.3 states:

*“Departments and central agencies are responsible for establishing internal guidelines and procedures to guide those employees who exercise delegated authority for purchasing and to ensure compliance with procurement policies, guidelines or directives that may be communicated through the GMA, the FAM, the Procurement Administration Manual, or other means.”*

It is the department’s responsibility to ensure policies and procedures ensure proper approval of all contracts.

IACS discussions with [REDACTED] management indicated the normal contract approval process uses an approval document known as the [REDACTED] form. The [REDACTED] form is to be prepared for all contracts, including employment contracts, and routed through the [REDACTED] with supporting documentation and required signatures.

\_\_\_\_\_ reviews the \_\_\_\_\_ and supporting documentation for completeness, accuracy, appropriate authorization, and compliance with contract reporting requirements.

The \_\_\_\_\_ review of the \_\_\_\_\_ and supporting documentation for the IAs identified in Appendix A did not occur. IACS obtained evidence that \_\_\_\_\_ did not route the IAs through \_\_\_\_\_ nor were they using \_\_\_\_\_ for the IAs. \_\_\_\_\_ management indicated the \_\_\_\_\_ were not consistently submitted to \_\_\_\_\_ as some managers believed IAs were the equivalent of secondment agreements and therefore the \_\_\_\_\_ was not required.

*Recommendation:*

*We recommend \_\_\_\_\_ modify its policies and procedures to ensure all contracts, including IAs, receive proper central departmental review and communicate the modified policies and procedures to all staff.*

*Management Comments:*

*Agree. The CSC and TBS are responsible for providing direction on and establishing corporate policies in this regard and will work together to ensure the revised policy and procedures are communicated to all stakeholders.*

*Departments are responsible for reminding and educating staff with respect to the corporate policies.*

*The department of \_\_\_\_\_ is committed to reviewing its internal procedures to ensure consistent communication and application and will also remind and educate staff with respect to the related corporate policy expectations and requirements.*

### **2.3.2 Management Override of Internal Controls**

Our review identified the former DM of \_\_\_\_\_ did not follow departmental and corporate policies and procedures, resulting in the former DM of \_\_\_\_\_ approving the IAs without involvement of the CSC and without review by CLS. Management override of internal controls led to the issuance of offers of employment from outside the CSC.

Our review identified that the former ADM of \_\_\_\_\_ while under an IA with the GoM, also did not follow departmental and corporate policies and procedures. This action resulted in the former ADM of \_\_\_\_\_ approving an IA without authority to do so, without involvement of the CSC, and without review by CLS. Again, management override of internal controls led to the issuance of an offer of employment from outside the CSC.

We obtained evidence that the former ADM of \_\_\_\_\_ also provided guidance in May 2016 to comptrollership staff within \_\_\_\_\_ that “\_\_\_\_\_”

A staff member two levels removed from the former ADM of [REDACTED] advised of the importance of the [REDACTED] and the requirement to review all contracts, even if they are secondment or interchange agreements. The staff member requested information on the proposed processes to ensure [REDACTED] receives all contracts, including employment contracts, as required; however, no response was provided.

Interchange agreements and secondments agreements are employment contracts and should have required the [REDACTED] and should not have been excluded from the requirement to review all contracts. Circumventing the [REDACTED] review processes removes all effective controls to ensure:

- IAs, or a standardized pre-approved form for IAs, are approved by CLS as required in GMA section 1.3
- CSC authorizes all related staffing actions and monitors the staffing process
- the contract employee terms and conditions are discussed with the Labour Relations Division of Treasury Board Secretariat prior to entering into the employment contract

Regardless of intention, the former ADM of [REDACTED] who was providing the guidance to staff overrode critical internal controls.

In general, EFOs are known to be the whistleblower officers within departments; the [REDACTED] leaving staff members at lower authority levels without any obvious options for corrective action.

Overall, the inappropriate approval of IAs and the circumvention of corporate and departmental policies and control processes, including the [REDACTED] review processes, resulted in significant financial and reputational risk to the GoM.

As identified in section 2.1.2, a strong educational effort is required to enhance staff understanding of interchange agreements and secondment agreements, and the required approvals.

*Recommendations:*

*We recommend:*

- The Office of the Clerk of the Executive Council, in consultation with CLS, assess the impact of management's override of internal controls in relation to the GoM's Values and Ethics Policy and on the desired corporate control culture, and determine the next course of action*
- TBS remind all departments of the contract review requirements*

- iii) TBS remind all departments that IAs are employment contracts that require CSC involvement, CLS review, and consultation with the Labour Relations Division of TBS to ensure department policies and procedures reflect the following:
- all contracts or standard pre-approved contract templates, including IAs, are to be approved by CLS
  - all staffing actions require CSC authorization and monitoring
  - contracts for all contract employees, including IAs, are to be discussed with the Labour Relations Division of Treasury Board Secretariat
- iv) The Office of the Clerk of the Executive Council, in conjunction with the OPC, implement a tip line for senior financial staff or other staff feeling pressured to circumvent or ignore critical internal controls, and for staff witnessing such occurrences

*Management Comments:*

- i) Agree. The Clerk will send direction to all deputy ministers providing clarification on the rules for IAs to ensure that there is no misunderstanding. The Clerk will raise this issue at a Deputy Ministers' Committee meeting, emphasizing the need to secure appropriate approvals and when in doubt to seek the opinion of the Civil Service Commissioner, the Provincial Comptroller or the Secretary to Treasury Board. The Clerk will also meet with the staff involved in this specific situation and emphasize the need to ensure all internal controls are followed appropriately.
- ii) Agree.
- iii) Agree. LSB has been asked to clarify whether an interchange agreement is considered an employment contract as defined by the GMA.

*As IAs are staffing actions, they will require CSC authorization.*

*The CSC agrees that the standard template, currently in development, will be vetted by LSB and the Labour Relations (LR) Division of the CSC. It is important to note that individual IAs would require LSB and LR review only in situations where the terms and conditions of the agreement deviate from the prescribed template.*

- iv) Agree. The Clerk of the Executive Council will direct that the OPC review this issue and develop recommendations.

### **2.3.3 Vendor Management Practices**

Policies and procedures do not prevent the payment of employees through the accounts payable system.

IACS reviewed a sample of invoices for the eight IAs identified in Appendix B. Our review indicated two organizations were already existing vendors within the accounts payable system; therefore, no additional vendor setup or changes were required to effect payment; only an invoice approved by a delegated spending authority to initiate payment to these organizations was required. Central Accounts Payable (CAP) had to set up new trade vendors for the remaining organizations.

Based on discussions with the OPC and CAP, departments submit an Add/Change Vendor Request (VR) form to set-up new vendors. The VR is signed by the Director, Financial and Administrative Services, or another individual delegated by the Director. A copy of the vendor invoice is attached to the VR.

The FAM Checklist is to be completed and approved by the EFO to confirm whether the independent contractor is an employee of GoM or a self-employed contractor. IACS confirmed the VR forms do not require a copy of the approved IA or FAM Checklist as supporting documentation when requesting a new vendor set-up; all that is required is the invoice to be used for future payments. Since contracts (including IAs) are typically with organizations, there is a significant risk that FAM Checklists and CRA assessments will not be completed, as they are not required to set-up new vendors.

OPC management indicated FAM Checklists are occasionally completed on a reactive basis at CAP's request. When a CAP clerk notices the payee is an individual (rather than an organization), prior to processing the invoice, the CAP clerk will return the invoice to the originating department asking them to complete the FAM Checklist and return it along with the invoice. It is difficult for CAP clerks to identify IAs with organizations as the intent of the relationship may not be evident on the invoice.

Proactive completion of the FAM Checklist by departments and requiring the completed FAM Checklist as supporting documentation for new vendor setup and approval of IAs will ensure the correct identification of the working relationship (employee of GoM or self-employed contractor) and the correct payment set-up in SAP (employee or trade vendor) prior to payment, and will reduce the risk of exposure to penalties and fines by the CRA. Modifying the FAM Checklist as noted in section 1.2.2 would increase the likelihood of correct completion and therefore the appropriate treatment of IAs.

*Recommendation:*

*We recommend proactive completion of the FAM Checklist by departments and requiring the completed FAM Checklist as supporting documentation for the setup of all new vendors and the approval of all IAs.*

*Management Comments:*

*Agree. The procedures document under development will link to the FAM checklist 8B-2.21 or an IA specific checklist.*

*The CSC and OPC are committed to communicating all changes to the various users (deputy ministers, EFOs and human resource practitioners.). OPC also commits to the development of an FAIC on this topic as needed.*

### **2.3.4 Departmental Listing of Contracts over \$10,000**

As part of an ongoing commitment to transparency and accountability, the GoM discloses information on contracts valued at \$10,000 or more each month. IACS reviewed the unaudited departmental listing of contracts and noticed that none of the IAs were included on the listing. As identified in section 2.2.3, the counterparty organizations to the IAs were set up as trade vendors.

IACS inquired with senior financial management within [REDACTED] who stated the IAs are exempt from the \$10,000 online disclosure as they fall under salaries, or payments made for secondments, term employees, regular employment contracts or other employee salary arrangements. Senior financial management within [REDACTED] also stated for this reason, the IAs do not require a purchase order and therefore are not included in the monthly SAP report generated for facilitating public disclosure of contracts over \$10,000.

IACS reviewed the GoM's guidelines for reporting government contracts over \$10,000 and understands [REDACTED] reasoning to exclude the IAs from the online contracts over \$10,000 listing. However, we noted different treatment of the IAs within [REDACTED] based on the purpose of the test:

- exclusion of the IAs from Volume 2 schedule of public sector compensation as they are not considered employment contracts and the counterparty organizations were set up as trade vendors (see section 2.2.3)
- exclusion of the IAs from the online contracts over \$10,000 listing as they fall under salaries, or payments made for secondments, term employees, regular employment contracts or other employee salary arrangements

As identified in section 2.1.2, a strong educational effort is required to enhance staff understanding of interchange agreements and the required disclosures.

## **2.4 Employment Contract Approval**

*Criteria:*

Contracts are approved in accordance with GMA and CSC policies, including legal services consultation or review as appropriate.

Conclusion:

The IAs were not approved in accordance with GMA and CSC policies, including delegated financial signing authorities, and did not include CLS consultation or review.

The delegation of financial signing authority chart for [REDACTED] shows C1 employing authority is required to approve interchanges and direct appointments; this authority has been delegated to the DM. Seven of the eight IAs were approved by the DM. One was approved by an ADM.

GMA section 1.3 notes Treasury Board approval is also required for:

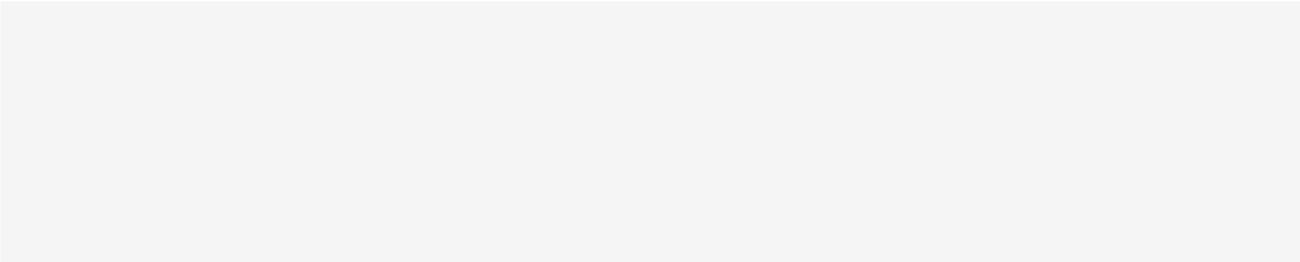
- recruitment to vacant senior management positions, including Senior Manager, Senior Officer, Executive Officer, and equivalent positions
- acting status appointments to fill temporary absences in senior management positions for a period of more than six weeks as a result of the secondment or acting status appointment of the regular employee to another position, or the regular employee being on extended leave

Four IAs were not submitted for Treasury Board approval; the positions filled by the IAs were senior management positions and more than six weeks in duration.

#### **2.4.1 Approvals Required for Appointments**

The DM of [REDACTED] with delegated signing authority approved seven of the eight IAs identified in Appendix B, consistent with policy. One contract was inappropriately signed by an acting ADM.

Of the eight positions appointed using IAs, four appointments were at the ADM or Executive Director level and were not submitted for Treasury Board approval as required by current policy:



IACS discussed the lack of TB approval with the CSC representative who stated that TBS verbally advised CSC that additional submissions for the regular ADM position were not required as the acting ADM appointments were previously approved by TB. IACS was unable to confirm this statement, as there is no documented evidence of this discussion. The CSC representative also stated they were unable to provide TB approvals for the two Executive Director appointments.

As the nature of an IA is complex and its usage has allowed departments to circumvent CSC involvement, removing the delegation of authority for IAs specifically could prevent similar occurrences in the future.

*Recommendations:*

*We recommend:*

- i) TBS, in coordination with CSC and the OPC, modify departmental employing authority to specifically exclude IAs and ensure said changes are made on all delegation of signing authority charts*
- ii) Departments ensure TB approval is obtained for all IAs for all senior management positions regardless of whether it is a regular or an acting appointment, consistent with the GMA*
- iii) TBS clearly define “senior management” within the GMA*
- iv) IAs only be approved by the appropriate signing authority after the required TB approval has been received*

*Management Comments:*

- i) Partially Agree. The Clerk of the Executive Council will send direction to all deputy ministers providing clarification on the rules for IAs, including the requirement to obtain appropriate approvals based on the level of position being staffed.*

*A review will be undertaken to determine the appropriate approval levels for IAs, which will then be incorporated into the applicable policies.*

*Revisions to the CSC’s policy 2.1.0 Staffing Methods will also require that appropriate approvals are obtained.*

- ii) Agree. The CSC agrees that appropriate approvals are required to fill all senior management positions. TB does not approve how the positions are filled (e.g. IA). The CSC notes that IAs are temporary staffing actions in and of themselves.*

*The OPC notes that as per the Comptrollership Framework, consultation with the Provincial Comptroller on the recruitment and appointment of EFOs is required. The audit identified this as not occurring.*

- iii) Agree. The CSC would collaborate with TBS to support this clarification.*

- iv) Agree. Clarification from LSB as to whether IAs are employment contracts will determine if TB approval is required for all IAs. Should they not be, a review will be undertaken to determine whether TB approval should be required for all IAs or if there would be exceptions.*

As IAs are staffing actions, the related policies and procedures currently under development will reflect that appropriate staffing authorization (TB or otherwise) must be in place before an agreement/employment offer is signed.

### 2.4.2 Timeliness of Interchange Agreements

We reviewed IAs related to the five organizations identified in Appendix A and compared the effective start dates with the approval dates to ensure they were aligned with the GMA section 1.3 which states “no commitment to the individual may be made until the contract is approved”.

Our review indicated that contrary to the GMA requirements, five of the eight IAs contained effective dates prior to approval dates (see Appendix C and the following table).

Company	Position	Effective Date	Approval Date
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Specific to [REDACTED]

- the second IA with [REDACTED] was for an [REDACTED] role beginning [REDACTED] the IA was signed by the DM of [REDACTED] year after the IA start date and after the IA expiration date of [REDACTED] the related TB approval was received [REDACTED], and the OIC authorizing the IA was dated [REDACTED]
- regular payments were made to [REDACTED] for the [REDACTED] role beginning [REDACTED] even though an approved contract did not exist
- the third IA with [REDACTED] was for a [REDACTED] role beginning [REDACTED] the IA was signed by the DM [REDACTED] almost a full [REDACTED] after the IA start date; TB approval was not obtained

Every effort should be made to approve contracts prior to the start of the contract, consistent with GMA requirements, and payments to vendors that are not supported by an approved contract should not be approved. Timely approval with appropriate signing authority ensures accountability for the commitment of public funds.

*Recommendations:*

*We recommend:*

- i) TBS reinforce with departments that all IAs must be approved in accordance with the GMA, and prior to the effective start date*
- ii) TBS and the OPC reinforce with departments that vendor invoices that are not supported by an approved contract should not be approved for payment*

*Management Comments:*

- i) Agree. IAs are staffing actions, and are governed by CSC policy. Communication of the requirements should be on a collaborative basis between TBS and the CSC and in accordance with CSC policy and the GMA.*
- ii) Agree. OPC is in full agreement with this recommendation and suggest this is included in the work to implement recommendations 1.2.1(v), 2.1.2(i), (ii) and (iv) and 2.4.1(i).*

### **2.4.3 Interchange Agreements with Regular Status Employees of GoM**

We reviewed CSC Policy section 2.1.0 and noted interchange agreements are defined as *“a temporary appointment between the GoM and another public sector organization”*.

Our review identified one IA with an effective start date of March 19, 2016 and no specific end date. This IA was used to fill a regular (non-term and permanent) ADM position. This use of an IA is in direct violation of the CSC Policy that states interchanges are for temporary appointments. A review of the IAs indicated this IA followed an expiring IA with the same individual for an acting status ADM position, providing further support that the IAs are not being used for temporary appointments as required by the CSC Policy. In addition, the counterparty to these IAs is not a public sector organization, additional evidence that the CSC Policy is not being respected.

A competition for the regular status ADM position was held; however, the position is not filled by a civil servant, but rather by an IA worker. IACS discussions with CSC representatives determined that the successful candidate from the competitive interview process wanted to remain an employee of the Agency, and not be an employee of the GoM, to retain certain benefits earned while working at the Agency. The successful candidate requested an IA in order to maintain said benefits and CSC facilitated the regular status IA, accommodating the wishes of the successful candidate without first taking further steps to fill the position by competitive means. This action is additional evidence the CSC Policy is not being respected.

CSC Policy section 2.2.6 Difficult to Recruit Guideline identifies steps to be taken to confirm difficult to recruit positions in a consistent and transparent manner based on a set

of common criterion. A number of practices that may be used when evidence confirms that a position is difficult to recruit are also identified. These steps and practices did not occur.

The IA contract was for \$ [REDACTED] plus 15% for staff benefits and pay levy; \$130,765 (\$133,356 long service step) represents the salary and benefits that would be paid to a civil servant at the sixth step in a six-step salary range.

If the successful candidate to the competition did not want to work for the GoM, the CSC should have considered other alternatives, such as:

- Using an eligibility list for similar positions
- Reposting the position
- A secondment from other departments
- An underfill for development purposes

Without considering other alternatives and following the steps identified in the CSC Policy prior to agreeing to the successful candidate's request for an IA, the perception of a fair and equitable process is undermined.

Comparatively, if a tendered service contract was scored and awarded based on established criteria and, upon notification, the successful company insisted on changing the dollar value of the quote, this action would lead to disqualification. At that point, the next highest scoring tender would be awarded the contract or the tender would be reposted to reflect the changed dollar terms if no other qualified tenders were available.

A permanent IA (no specified end date) for a regular status position removes the temporary nature of IAs and has tax consequences. IAs or similar contracts with placement agencies are permitted by the CRA in part because the worker is on temporary assignment (one year or less) and the worker is expected to return to the placement agency. If the IA is permanent in nature, the facts supporting the IA worker's status have changed and it is likely that the IA worker will be deemed an employee of the Host (in this case, the GoM) for income tax purposes and the Host would therefore be liable for all statutory payroll remittances.

Since the IA worker is currently in a permanent IA for a regular status position and is continuing in that capacity, any liabilities related to the statutory payroll remittances for an employee/employer relationship with the GoM are growing with each passing pay period.

The CSC and [REDACTED] should coordinate efforts to end the permanent IA. The CSC should discontinue the use of non-temporary IAs and should demonstrate compliance with the CSC Policy for difficult to recruit positions.

*Recommendations:*

*We recommend:*

- i) CSC and [REDACTED] coordinate their efforts to end the permanent IA*
- ii) CSC ensure all IAs are temporary in nature*
- iii) CSC demonstrate compliance with the CSC Policy for difficult to recruit positions*
- iv) CSC only enter into IAs with public sector organizations*
- v) CSC amend its procedures to support compliance with the CSC Policy*

*Management Comments:*

- i) Agree. The IA in question ended in October 2017.*
- ii) Agree. The CSC will ensure that all IAs are authorized for a defined term.*
- iii) Agree.*
- iv) Partially Agree. The CSC agrees with the audit findings related to this recommendation. However, in consideration that government may be interested in engaging expertise from private industry, the CSC is re-evaluating the 2.1.0 Staffing Methods policy.*

*The CSC will consider, through consultation with LSB and OPC, CRA rules, requirements relating to public sector compensation disclosure in the IA template and the GoM's risk exposure.*

- v) Agree. The CSC is in the process of reviewing the 2.1.0 Staffing Methods Policy. The procedural guideline for secondments and interchanges will be consistent with the revised policy.*

#### **2.4.4 Civil Legal Services Review/Approval of Interchange Agreements**

The IAs signed by the GoM with the organizations listed in Appendix A used multiple contract templates which, contrary to GMA requirements, were not always reviewed by CLS. IACS requested evidence of CLS review from [REDACTED] and the CSC and none could be provided.

IACS confirmed that CLS was not consulted on the most recent IA provided to the successful candidate to the regular status ADM position competition. Discussions with a CSC representative acknowledged that one IA was developed from another expiring IA without CLS involvement.

GMA section 1.3.7 states contracts should be approved by CLS and that approval can be for a “*standard pre-approved form*”. Use of standardized forms are encouraged as they

“greatly expedite the legal review process” and are recommended for both employment contracts and consulting agreements. Without a standardized form, individual CLS approval is required for each contract. By not arranging CLS review of the IAs, terms and conditions were not developed to protect GoM’s interests and to clearly define the nature of the relationship with the IA worker (see recommendations in section 1.2.1).

We met with CSC and [redacted] management and were advised that consultation with the Labour Relations Division of TBS also did not occur for:

- the three IAs with [redacted]
- the IA with [redacted] for the temporary Executive Director position
- the IA with [redacted] for the regular non-term ADM position (reclassified from acting status via OIC)

Only the two IAs for acting status ADM positions ([redacted] and [redacted]) were submitted for TB approval, and as a result, were reviewed by the Labour Relations Division.

This is contradictory to the GMA section 3.1 which states departments should discuss the proposed terms and conditions with the Labour Relations Division of TBS for all contract employees prior to approval of the employment contract.

*Recommendation:*

*We recommend CSC engage CLS to develop and approve terms and conditions specific to IAs, and develop a standardized pre-approved template for IAs. Any future changes or alterations to the standardized template would require CLS approval.*

*Management Comments:*

*Agree. The CSC is committed to working with LSB in establishing a standardized template for IAs.*

*The CSC is also committed to ensuring that any changes to the terms and conditions established in the standardized template will require review and approval by LSB.*

#### **2.4.5 Completion of the FAM Checklist**

We noted the required completion of the FAM checklist in FAM policy 8B-2.21, to determine whether workers are independent contractors or employees, did not occur for the IAs identified in Appendix B.

FAM policy 8B-2.21: Contracts with Self-Employed Individuals requires the FAM Checklist be completed and signed by the EFO to support an assessment of whether a contract is with an independent contractor or a GoM employee.

IA workers can be employees of their interchange organization, employees of the GoM, or a combination of employee and deemed employee for the two organizations for tax purposes. As recommended in section 1.2.2, the FAM Checklist should be modified to include situations involving IAs and the required completion of the FAM Checklist should be communicated to all necessary parties.

## **2.5 Payment of Deemed Employees**

### *Criteria:*

Policies and procedures prevent the payment of deemed employees through the SAP accounts payable system.

### *Conclusion:*

Our review indicated approval policies or procedures that prevent the payment of deemed employees through the SAP accounts payable system exist; however, they are not effective and can be circumvented.

Detecting payments to deemed employees via the accounts payables system is difficult as one vendor may have multiple types of contracts. As an example, as identified in Appendix A, [REDACTED] is one of the organizations party to an IA. [REDACTED] likely has other service and professional consulting contracts with the GoM and therefore payments via invoice are unlikely to raise concern.

The FAM Checklist, the required CLS review, and adherence to the CSC Policy can prevent deemed employees from being paid through the accounts payables system. However, the effectiveness of these GoM policies and procedures is generally limited by an individual's knowledge of IAs and use of the checklist (see section 1.2.2), and by the circumvention of corporate and department policies and procedures (see sections 2.2.2 and 2.3.2).

## **3.0 CONFLICTS OF INTEREST**

### *Objective:*

To assess whether conflicts of interest have been appropriately disclosed and resolved in accordance with government policy.

### **3.1 Conflicts of Interest**

#### *Criteria:*

Conflicts of interest have been appropriately disclosed and resolved in accordance with the Principles & Policies for Managing Human Resources section 3.2.1 Conflict of Interest and the GMA section 3.0 Human Resources.

*Conclusion:*

Conflicts of interest (COI) declaration forms were obtained for two of the five IA workers with the organizations listed in Appendix A. COIs were declared by Employee 4 without adequate documentation of management's assessment of the plan to address the declared conflicts of interest. Employee 1 did not declare a COI for shareholdings in a company that provided contracted services to the GoM.

Given the high level positions held by the IA workers and the level of transparency required while working in the public sector, COI declaration forms should have been accurately completed. It is important that all employees, temporary or permanent, act and be perceived to act in a manner that is in the best interest of the GoM and does not result in any undeclared or unmanaged conflict of interest situations.

### **3.1.1 Lack of Documented Conflict of Interest Forms**

Discussions with the CSC representatives indicated that IA workers are not required to complete conflict of interest declarations, as they do not meet the definition of a civil servant.

As previously identified, the IAs were set up as contracted vendors within the accounts payable system, and not as employees within the payroll and benefits system. If they had been set up as employees within the payroll and benefits system, CSC representatives stated a COI declaration would have been required. Consistent with the above, Employee 5 signed a COI declaration form after the IA was terminated and Employee 5 became a civil servant with the GoM.

IACS reviewed the Civil Service Act and the Provincial Conflict of Interest Policy and determined they apply to all civil service employees. "Civil Service" is defined in the Civil Service Act as follows:

*"means the employees of the government in positions, appointments, or employments, now existing or hereafter created, including the members of any agency of the government to whom, or the employees of any agency of the government to whom, any provision of this Act has been declared to apply under subsection (2), or both such members and such employees, but does not include...*

*(e) any person paid by fees or hired on a special contractual basis or as an independent contractor; and..."*

Under this definition, IA workers would not be required to complete a conflict of interest declaration, as they would fall under category (e) listed above.

### *Annual COI Declarations*

IACS noted in the OAG Report entitled 'Manitoba's Framework for an Ethical Environment' that the CSC sends a memo to all DMs requesting annual conflict of interest declarations. Through further discussion with the CSC, IACS also determined an annual communication is distributed to all DMs advising them that ADMs "*are required to provide...their written annual declaration even if no change has occurred,*" and that other employees "*should be reminded by their supervisors that they are to review their current situation and revise their declaration if there has been any change in the information they have on file*".

Therefore, since some of the IA workers were holding ADM positions within [REDACTED] annual COI declarations were obtained for them, as listed in Appendix D.

Obtaining annual conflict of interest declarations mitigates the appearance of any perceived or potential conflicts of interest that can undermine public confidence in government. CSC should reaffirm procedures for submitting annual COI declaration forms, and ensure the procedures require all sections of the COI form be completed, including employee plans to address declared COIs and management's assessment of proposed COI resolutions.

COI terms and conditions should be detailed in any new IA templates developed in consultation with CLS (see section 2.4.4) and consideration could be given to attaching a COI declaration form to all IAs in the future. CSC should reaffirm the requirements of the Provincial COI Policy and communicate such to all departments to ensure COI declaration and management requirements are met going forward.

#### *Recommendations:*

##### *We recommend:*

- i) CSC reaffirm procedures ensuring all sections of the COI form are completed, including employee plans to address declared COIs and subsequent management assessment regarding resolution of the COI*
- ii) CSC reaffirm the requirements of the Provincial Conflict of Interest Policy and communicate such to all departments to improve awareness and understanding*
- iii) CLS, in coordination with the CSC, include COI clauses in the standardized IA template*

#### *Management Comments:*

- i) Agree. The IA template developed by the CSC in consultation with LSB will require that a conflict of interest declaration be completed (even if nil). A conflict of interest audit is being conducted to evaluate if forms are being completed and routed*

*appropriately.*

- ii) Agree. The 3.2.1 Conflict of Interest Policy requires deputy ministers or designates to communicate on an annual basis to employees their responsibility to disclose conflict of interest situations in accordance with policy and department guidelines (if applicable).*

*The CSC also communicates to deputy ministers regarding this requirement on an annual basis. The most recent communication was issued January 4, 2017.*

- iii) Agree. The IA template developed by the CSC in consultation with LSB will require that a conflict of interest declaration be completed (even if nil).*

**Interchange Agreements \***

Employee 1

Contract: [REDACTED]  
 Vendor: [REDACTED]  
 Total Paid: \$140,000 - \$150,000

Employee 2

Contract: [REDACTED]  
 Vendor: [REDACTED]  
 Total Paid: \$50,000 - \$60,000 ( [REDACTED]

Employee 3

Contract: [REDACTED]  
 Vendor: [REDACTED]  
 Total Paid: \$50,000 - \$60,000  
 Payments ended [REDACTED]

Employee 4

Contract: [REDACTED]  
 Vendor: [REDACTED]  
 Total Paid: \$220,000 - \$230,000 ( [REDACTED]

Employee 5

Contract: [REDACTED]  
 Vendor: [REDACTED]  
 Total Paid: less than \$10,000 ( [REDACTED]

\* Information as of November 1, 2016



Table of Interchange Offerings

Person	Position	Term of Contract	Signatories			Approvals	
			Signing Authority	Client/Company	Employee	OIC	TB
Employee 4			Deputy Minister --	Owner, President --	Employee 4 --		
			Deputy Minister --	Owner, President --	Employee 4 --		
			Deputy Minister --	Owner, President --	Employee 4 --		
Employee 1			Deputy Minister --	Partner, --	Employee 1 --		
			Deputy Minister -- NO DATE	Associate --	Employee 1 --		
Employee 3			Deputy Minister -- ILLEGIBLE		Employee 3 --		
Employee 2			Employee 1 --	--	Employee 2 -- Did not sign		
Employee 5			Deputy Minister --	Employee 5 --	Employee 5 --		
			A/Executive Director --				
			Employee 4 --				

- NR Per CSC representative, OIC Approvals are not required for Executive Director level and below
- NA Per CSC representative, TB Approvals are not required as the position salary is below the senior manager threshold
- NS A/Director CSC unable to find documentation supporting submission to TB
- A No TB Approval obtained. A/Director CSC stated it was not required as previous TB Approval already in place.
- 1 Retroactive Approvals (Approved after contract start date)
- 2 Retroactive Approvals (Approved after contract ended)
- 3 Inappropriate Signing Authority - Signed by ADM not DM

Table of Employee Conflict of Interest Declarations

Person	Position	Term of Contract	Annual Conflict of Interest Declaration Form		
Employee 4			Employee signed [redacted] - -	- Employee signed [redacted] Employee signed [redacted] -	- - Employee signed [redacted]
Employee 1			Employee signed [redacted] -	- Employee signed [redacted]	- -
Employee 3			No form obtained	No form obtained	-
Employee 2			-	No form obtained	No form obtained
Employee 5			-	No form obtained	-

- 1 COI form dated five months after contract start date
- 2 Employee declared COI with the former DM; the COI form lacked documentation of management assessment/resolution of the COI
- 3 COI signed by former DM on [redacted]
- 4 Employee declared new COI; the COI form lacked documentation of management assessment/resolution of the COI
- 5 Employee declared multiple COIs, including relationship with former DM; the COI form lacked documentation of management assessment/resolution of the COI
- 6 COI signed by former DM on [redacted]
- 7 No COI declaration for [redacted] providing services to the GoM
- 8 No COI form obtained while on the interchange agreement; the COI form dated [redacted] relates to the position of Deputy Minister; the COI form is an outdated version of the form