



# AUDITOR GENERAL

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*May 1995*

*A Review of Contracts Between  
NOW Communications Group Inc.  
and the Government of British Columbia*





# ***A Review of Contracts Between NOW Communications Group Inc. and the Government of British Columbia***



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# ***A Review of Contracts Between NOW Communications Group Inc. and the Government of British Columbia***



## **Auditor General's Comments**

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In response to the considerable attention given to questions that were raised publicly about the relationship between NOW Communications Group Inc. and the government of British Columbia, I decided to have my Office review certain administrative aspects of that relationship. Although the transactions called into question publicly did not involve particularly large sums, at least when considered against the total amounts expended by government, the issues raised were troubling by their nature as they involved the suggestion of a lack of probity and propriety in the conduct of government business. As certain administrative aspects of the issues raised publicly were within my mandate and competence to examine, I believed my Office could contribute to their resolution.

My Office has concluded its comprehensive examination of the business dealings between the government and NOW Communications Group Inc. (NOW). Based on that examination, I have concluded that NOW was treated similarly in its relations with government to other companies that supply similar services. Our examination revealed no pattern of favoritism towards NOW in the awarding of government communications work.

The examination conducted by my Office also established that, for the most part, the government managed and controlled its relations with NOW appropriately, and classified and reported payments made to NOW appropriately. However, I am perturbed by the manner in which a few specific transactions were managed and reported.

My Office's review has established that some transactions were structured such that the form of the transactions served to mask their true substance. In these cases, the billings and sometimes the accounts do not reveal the identity of the true supplier. In some instances, services arranged for by government officials and received directly from suppliers that might be controversial, either because of their political affiliations or because they were based in the United States, were contracted for through NOW even though staff of NOW were not significantly involved in either the



provision or management of these services. The billings received and approved by government did not disclose the identity of the true supplier, and the transactions were recorded in the accounts as services provided by NOW. In other instances, where American subcontractors were used by NOW to supply services to government, the amounts paid to the subcontractors by NOW were converted on the billings rendered to government into an equivalent fee for service as if the work had been performed by NOW staff. In all these cases, the total amount paid by the government to NOW is consistent with the contractual expectations and the actual services performed.

When serious shortcomings in government administration are brought to light, questions of intent and motive arise. However, such questions are not generally susceptible to external examination as they go to the state of mind of an individual at a point in time. The use of a foreign supplier for communications services does not contravene government contracting policies or guidelines. Yet the only apparent advantage or reason for non-disclosure in the cases we reviewed would seem to be to keep people from knowing about the involvement of a controversial supplier. From evidence obtained during the course of our examination it was established that the senior government managers directly involved with the contracts — those requesting, receiving and approving the services — were aware of the true substance of these transactions. The financial staff processing the documents and those relying on reports prepared from government records were not.

In giving evidence before me, the Premier stated that he was aware that the government was using the services of Struble-Totten, and Mellman, Lazarus and Lake, but he was not aware of the manner in which the billings for these services were handled or the accounting records were kept. I am satisfied that these statements are consistent with a management style and process that is appropriate to his position as Premier.

George L. Morfitt, FCA  
Auditor General

Victoria, British Columbia  
May 15, 1995



# ***A Review of Contracts Between NOW Communications Group Inc. and the Government of British Columbia***



## **Purpose and Scope of This Review**

We examined the business transactions that took place through the Consolidated Revenue Fund between the government of British Columbia and NOW Communications Group Inc. (NOW) in the four fiscal years to March 31, 1995. Our purpose was to answer three questions:

- In its contractual relations with government, was NOW treated the same way as other companies that supply similar services?
- Did the government appropriately manage and control its contractual relations with NOW?
- Have payments made to NOW been classified and reported appropriately by the government?

We did *not* try to answer, in this investigation, three related questions:

- Were public funds being spent for political, rather than governmental, purposes?
- Is government communications expenditure cost-effective?
- Were contractors used to carry out communications work that could have been done by government employees?

### **Political Expenditures vs Government Expenditures**

There is sometimes public debate about whether certain communications expenditures of government are for the political benefit of either the government of the day or of particular members of the government. In British Columbia there is no policy guidance on how to determine whether an expenditure is political. In conducting our review, we obtained information on the rules for government advertising in all provinces. We were unable to determine any precise rules for defining political advertising from the information received. Therefore, as we had no objective standard to use in forming a judgement, we did not attempt to determine whether any of the communications expenditures examined in this report could be considered political in nature.



## Overall Conclusion

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**In its contractual relations with government, NOW was treated similarly to other companies that supply similar services.**

**The government, in general, appropriately managed and controlled its contractual relations with NOW, although we found a limited number of significant exceptions.**

**Reporting and accountability was not appropriate, because a number of contracts issued by the Public Issues and Consultation office masked the true providers of the services under the contracts.**





## The Review Process

In obtaining sufficient evidence from which to draw our conclusions, we placed particular emphasis on completeness and context. Completeness was important because we wanted to be sure that we were examining all of NOW's work for the government. Context was important because we wanted to be able to judge NOW's business with government on the basis of how government treated companies providing similar services during the same period.

To ensure completeness, we compiled a list of all NOW contracts with government (included as an Appendix to this report). We also assembled a list of all government payments to NOW, related these payments to the totals reported in the *Public Accounts*, and matched each payment to our contract list. We also surveyed the major crown corporations and other entities included in the government summary financial statements, looking for indications of transactions through these other entities that related to the contracts within the scope of our review. We found none.

To develop context, we reviewed lists of all government communications contracts awarded in the last four years, and reviewed the rules and guidelines for communications contracting. To obtain an understanding of how the rules and guidelines are applied in practice, we interviewed a number of communications directors in government as well as staff members in the Government Communications Office. These

interviews we supplemented by reading the transcripts of interviews carried out as part of the Conflict of Interest Commissioner's review of a related matter.

Once we were fully aware of all of NOW's transactions with government and understood the context in which government communications contracting was carried out, we assembled evidence pertinent to each of our three questions. We then looked at each question from both a broad and a more focused perspective, and correlated our findings.

Our review was in relation to communications contracts in place in the 1991/92 to 1994/95 fiscal years—a period that, with the exception of the first part of 1991/92, corresponds to the current term in office of the present government. We did not compare communications practices under the present government with those of previous governments.

### *Question 1: Equal Treatment of NOW and Other Contractors*

For a broad perspective on this question, we assembled statistics on communications spending and tendering by government, and calculated indicators of NOW's share of communications spending, its relative success in winning competitive tenders, and its relative success in winning direct awards. We also looked at how NOW's prices—that is, the hourly rates it charged for its staff—compared to those of its competitors.

Further, we focused our attention on unusual or large contracts turned up during the



assembling of our complete contract list. We also examined contracts about which the Conflict of Interest Commissioner's report had raised questions, and contracts about which media attention suggested possible problems.

### *Question 2: Administering Contracts*

Our broad perspective on this question was built up from inquiries from two directions. First, we started from the contract list we had assembled, and gathered and scrutinized copies of the contracts and the related invoices. We also obtained similar documents for a selection of other communications contractors, and examined a selection of products (such as designs, TV scripts, and survey analyses) produced by NOW and those other suppliers.

Second, we started from our payment list and traced essentially all payments through the government payment system to the original source documents and invoices. We similarly traced a sample of transactions with other suppliers. We also traced part of the NOW sample directly to the time and expense records kept at NOW's offices.

Any unusual transactions identified by this scrutiny we examined in more detail. For each such transaction we examined the documentary evidence and interviewed government and NOW staff involved in the transaction, until we were confident we understood its nature and circumstances. In situations where we obtained conflicting information, we have reported that circumstance.

### **History of NOW Communications Group Inc.**

The company was founded in December 1991 by Shane Lunny, Ron Johnson, Dennis McGann and Larry Huber. Shane Lunny is a principal in Shane Lunny Productions Inc., a film and TV production company, and in other specialist communications firms. Ron Johnson has worked in public relations and communications since 1973, primarily for B.C. trade unions. Dennis McGann has an extensive advertising and communications background with the Canadian Union of Public Employees. Larry Huber is the financial manager for Shane Lunny Productions.

Lunny and Johnson have known each other for at least 15 years and worked together to produce advertising for the British Columbia New Democratic Party election campaign in 1991 when Johnson was Communications Director for the BC NDP.

In August 1994 Lunny sold his interest in NOW to Johnson and McGann, ending his association with the company.

NOW is associated through common directorship with Chi Tah Communications, Inc., a company set up in September 1994 to supply advertising and communications for clients wishing to communicate in the Chinese language.

NOW specializes in social marketing—the marketing of ideas, attitudes, and social change for non-commercial entities such as unions and governments. Although other firms include social marketing as part of their range of services, NOW appears to be the only firm in British Columbia with an emphasis in that area.



### Question 3: Accountability

For a broad view of this question we examined how communications expenditures are reported publicly in the *Estimates* and the *Public Accounts*. We also interviewed communications staff in ministries and in the Government Communications Office, and examined invoices, journal vouchers and other documents in order to understand how, in practice, communications expenditures were classified for inclusion in public reports.

In addition, we focused our attention on unusual contracts and transactions we found during our work on the first two questions. Any unusual transactions identified by this scrutiny we examined in more detail.

### Question 1: Equal Treatment of NOW and Other Contractors

***In its contractual relations with government, was NOW treated the same way as other companies that supply similar services?***

#### Conclusion

We concluded that, overall, in its dealings with the provincial government, NOW was treated similarly to other firms supplying similar services.

NOW did not receive a disproportionate share of government business. Nor was a pattern of favoritism shown in the way tenders were evaluated and contracts awarded to NOW.

#### **Government Communications Office**

The Government Communications Office is the lead agency for government communications. The Office develops communications policies and procedures and ensures that communications delivery meets professional standards and supports the government's messages and programs.

Ministries are required to have Government Communications Office approval before proceeding with any communications purchases. Before granting approval, the Office checks that the ministry has an appropriate plan and that the project will not conflict with other government communications activities.

The Office is led by an Associate Deputy Minister, who advises Cabinet on communications issues. The Associate Deputy Minister reports to the Deputy Minister of the Ministry of Government Services on administrative matters, but reports to the Chief of Staff of the Office of the Premier on all other matters.

#### **Public Issues and Consultation Office**

The Public Issues and Consultation office provides coordination of public consultation, legislative and policy priorities, and assistance to the Premier and Cabinet to coordinate cross-ministry initiatives. It also has the primary responsibility in government for public opinion research, under which it coordinates both single-ministry research and government's participation in multi-user surveys that are available to ministries for research purposes.

The Assistant Deputy Minister leading the Public Issues and Consultation office reports to the Deputy Minister of the Ministry of Government Services on administrative matters, but reports to the Chief of Staff of the Office of the Premier on all other matters.



Further, the rates NOW charged for its services were comparable to those charged by similar companies.

## NOW's Share of Government Communications Spending

Budgeted government communications expenditures for the last four years are summarized by the Government Communications Office as follows:

1991/92	\$ 36.3 million
1992/93	34.7 million
1993/94	31.9 million
1994/95	34.6 million
Total	<u>\$137.5 million</u>

Of that total, NOW received about 3%. However, this is not the best measure of NOW's share of the market, because government communications expenditures include substantial amounts spent on printing and placing advertising in newspapers and magazines and on radio and TV—payments that are made directly through the government Agency of Record, rather than through the advertising companies that developed the advertising material. (The Agency of Record is a tendered contract to place all government advertising in the public media, in exchange for a fee based on a percentage of the placement cost.) When these and other unrelated payments are removed, the smaller amount remaining represents payments to advertising and public relations companies such as NOW. (What actually stays with the agencies is a still smaller amount, since often two thirds or more of payments to agencies are for expenses—outgoings to sub-contractors and suppliers—

rather than fees for the work of agency personnel.)

In looking at NOW's share of government business, we focussed on comparisons with NOW's potential competitors—other similar advertising and public relations firms—rather than with all suppliers included in the broad category of communications. We noted, for example, that advertising firms appear to have specialties within government, winning contracts for some ministries or programs but not others. For example, in the four-year period we examined, NOW has had success in social marketing areas but not in tourism, a provincial contract that another firm has held for the last two years.

Exhibit 1 shows payments (minus the Agency of Record payments) made by the government to the advertising and public relations companies that have received the most government business in the last four years. NOW accounts for 23% of these payments. This analysis shows NOW to be a significant supplier to government, but not one that dominates the market.

## Methods of Awarding Contracts

To expand upon the broad numerical analysis discussed above, we examined the processes by which government entities made decisions about issuing communications contracts. We found that the process varied with the size of the contract. This is appropriate in light of government guidelines, which recommend that contracts of \$50,000 or over be awarded competitively, but permit smaller contracts to be awarded directly.



## Exhibit 1

### Government Advertising Expenditure, By Communications Firm

*This table shows the advertising and public relations agencies that have received the largest amounts of work from the government of British Columbia in the last four fiscal years, and the amounts they were paid (\$ Millions)*

	1991/92	1992/93	1993/94	1994/95 <sup>(a)</sup>	4-year Total
NOW Communications Group Inc.	.2	1.1	1.9	1.6 <sup>(a)</sup>	4.8 <sup>(a)</sup>
Cossette Communication–Marketing (Vancouver)	–	.8	1.2	1.9	3.9
Palmer Jarvis Advertising	2.0	.4	.6	.6	3.6
McKim Baker Lovick/BBDO <sup>(b)</sup>	3.4	–	–	–	3.4
Windrim Kleyn & Lim Communications (Victoria)	.3	.2	.6	.8	1.9
Lanyon Phillips Brink Advertising	–	–	.5	1.1	1.6
Rodon Communications	.1	.3	.3	.2	.9
Wasserman Cozens Dundon	–	–	.3	.2	.5
Scali McCabe Sloves	–	.3	.1	–	.4
McCann–Erickson	–	–	–	.3	.3
<b>Total: above companies</b>	<b>6.0</b>	<b>3.1</b>	<b>5.5</b>	<b>6.7</b>	<b>21.3</b>

<sup>(a)</sup> 1994/95 shows budgeted amounts according to communications project approvals submitted to the Government Communications Office. These figures are not directly comparable to those in the Appendix, which shows actual payments.

<sup>(b)</sup> This company also holds the government Agency of Record. The table shows only payments received by the company in its role as a creative advertising agency, but not as the Agency of Record.

We first reviewed communications contracts under \$50,000, and found that issuing such contracts by direct award is the normal practice. Where communications managers are tendering for some new type of service, they may solicit bids from several firms, but for work with which they have prior experience they usually award the contract directly to the firm they feel can carry out the job. The essential product that communications firms are selling is the creative ability, skills, knowledge, and special

expertise of their staff. Once a communications manager has found a good service provider, he or she tends to use that firm for future work. Our examination of detailed listings of all communications contracts did not turn up any systematic difference between NOW contracts under \$50,000 and other communications contracts under \$50,000.

Next, we examined the tendering of contracts over \$50,000. We looked both at tenders that NOW had won and tenders that it had lost.





The standard way of assessing a communications tender involves a ministry panel which considers each bid, making its decision based on presentations from each bidder and on a review of samples of work and other material submitted. In some cases, bidders also have to respond to written questions. Ministries are required to document the reasons for their selection of tender winners, and to retain this information.

We looked at documentation for all tendered competitions that NOW had won. For several contracts we also interviewed members of the panels that had awarded the contracts. Although the documentation provided to us varied in completeness, in most cases we were given sufficient information to determine that the standard method was followed.

We also obtained from the Public Issues and Consultation office a list of 12 government contracts that NOW was not successful in winning, and examined the selection process for five of those contracts. In each case, we found the selection was based on an evaluation process that followed expected patterns. At least three firms were selected for each evaluation, and a panel of two or more made the selection after grading the candidates against documented requirements.

To further understand the norms of government contract awarding, we analyzed a summary we obtained from Government Communications Office of all communications contracts issued from April 1992 to February 1995.

Of the total 2,375 communications contracts issued by the government during the period,

we found that 136 were for \$50,000 or over, 41% of which had been tendered. In comparison, 33% of NOW's contracts of \$50,000 or more had been tendered. Contracts with the Ministry of Health have a major impact on this figure. We scrutinized the way in which the Ministry of Health issued contracts to NOW, and are satisfied that the process used was reasonable in the circumstances. (We discuss the ministry's tendering practices below, in "Question 2: Administering Contracts"). If the Ministry of Health is excluded from the analysis then 42% of contracts of \$50,000 or more to NOW have been tendered, which is similar to the overall pattern of tendering for all communications contracts of this size.

We concluded that, government-wide, NOW obtained its contracts through tendering in approximately the same proportion as has been the average for communications contracts over the same four-year period. At a more detailed level of analysis, we noted that three ministries show a somewhat different pattern (Exhibit 2). We examined the process by which NOW contracts had been awarded in these three ministries. As a result, although we have concerns about the administrative aspects of certain awards (discussed below under "Question 2: Administering Contracts."), we do not have concerns regarding fairness of treatment. That is, we found no evidence of favoritism in the awarding of these contracts.

## Cost of NOW's Services

A final question related to fair treatment is whether NOW is being paid similarly to its competitors for similar services. Advertising agencies



## Exhibit 2

### Pattern of Tendering of Contracts

*This table shows the frequency with which communications contracts of \$50,000 or more have been tendered in the fiscal years 1991/92 to 1994/95, for all ministries in total and for three individually*

	Number of contracts of \$50,000 or more		Percentage of contracts of \$50,000 or more that were tendered	
	All contracts	NOW contracts	All contracts	NOW contracts
All ministries	136	18	41	33
Ministry of Employment and Investment	8	4	38	0
Ministry of Finance and Corporate Affairs	5	2	80	50
Ministry of Health	28	6	61	17

bill government at hourly rates for the time worked. These rates are quoted during competitions for contracts, and are included as part of the contract with the winning bidder. We compared the hourly rates NOW and similar firms charge government.

We first compared NOW's rates to the benchmark rates used by the Ministry of Small Business, Tourism and Culture in evaluating tenders for the Province's tourism advertising campaign. The benchmark included seven staff positions directly comparable to those specified by NOW. Of these, we found NOW to be above the benchmark by 3% for one position, equal to the benchmark for two positions, and below from 6% to 20% for four.

We then compared NOW's rates to those quoted by 11 other firms in competitions for government communications contracts. In this comparison we found 12 similar positions. Of these, NOW was above the average

from 3% to 23% for four positions, equal to the average for two, and below the average from 2% to 13% for six.

We concluded that the cost of NOW's services did not differ significantly from that of similar firms.

### Question 2: Administering Contracts

***Did the government appropriately manage and control its contractual relations with NOW?***

#### Conclusion

Contractual relations between the government and NOW were, in general, appropriately managed and controlled. We did, however, encounter specific management and control situations that are significant enough to be reported publicly.



## **Rules and Guidelines for Communications Contracts**

Government requirements for issuing and administering contracts are set out in the *General Management Operating Policy* (GMOP), issued by the Office of the Comptroller General. For communications contracts, GMOP is supplemented by *Government of British Columbia Communications Guidelines* (June 1993) issued by the Government Communications Office. The relevant requirements are summarized below.

### ***Requirements for Selecting Contractors***

GMOP's guidelines call for contracts with a total potential cost (that is, including the effect of any extension, renewal, modification, or cost overrun) greater than \$50,000 to be awarded competitively, either by open advertisement or by invitations to bid issued to three or more potential suppliers chosen from a bidders list. For contracts with a total potential cost less than \$50,000, competition is not essential, although GMOP encourages it.

When awarding service contracts with a total potential cost greater than \$200,000, ministries are to take into account the "value added" being offered by the contractor. Value added includes, but is not limited to, the number of jobs and the business framework that will be created within British Columbia.

For advertising agencies in particular, eligibility requirements for receiving a government assignment include the operation of a British Columbia office.

Contracts with a total potential cost over \$250,000 in any 12-month period require the approval of Treasury Board, while contracts over \$100,000 but under \$250,000 in a 12-month period require the approval of the Secretary to Treasury Board. Furthermore, GMOP states: "Splitting contracts to avoid the obligation of obtaining approval is unacceptable. Re-awarding of a contract within three months of completion or expiry of the previous contract for the same work is regarded as an amendment to the original contract, and shall be approved or reported where required."

### ***Requirements for Contract Drafting***

According to GMOP, variable price contracts with an established unit price and a firm contract ceiling price should be negotiated whenever possible, and fixed price (lump sum) contracts should be avoided where variable price contracts can be negotiated. The policy further specifies that contracts for advertising and public relations agency services should be based on a fee-for-service for all work performed, and for reimbursement of the net cost of all media planning, production services, and other expenses incurred.

### ***Requirements for Payment of Invoices***

Public servants with the authority to certify invoices for payment must, before doing so, assure themselves that:

- the work has been performed or the goods delivered in accordance with the contract;
- the expenditure is a lawful charge against the appropriation; and
- payment is not made before the work or services are received, unless such payment is specifically provided for in the contract.



## Our Examination of Transactions

We examined transactions between the government and NOW to determine whether prescribed payment control procedures had been followed. During this work we examined 254 transactions, which amounted to 91% by number, or 93% by value, of all the payments that the government had made under its contracts with NOW. To give us an indication whether NOW's transactions were treated similarly to those of similar suppliers, we also examined a sample of 37 payments, worth about \$1.7 million, to other communications contractors.

We believe that the relatively small number of problem transactions found under this high level of scrutiny do not imply a pattern of weakness in either the government's financial control system or in the manner in which the system exercised control over transactions with NOW. Nevertheless, the manner in which certain transactions, discussed below, were managed and controlled causes us significant concern.

In some of the situations discussed below, NOW may seem to be the active party, since it submitted the invoices. However, in each case NOW willingly disclosed the transactions to us; it kept records explaining the nature of the transactions; and the transactions appeared to be of more advantage to NOW's clients than to NOW. In each case NOW has told us either that it was following directions from government officials initially, or had assumed

that the directions received previously should be followed in similar cases. The company believed, for example, that it was the desire of its clients to mask the use of American suppliers (as discussed below in "Question 3: Accountability").

## Public Issues and Consultation Office

The Public Issues and Consultation office issued 9 contracts to NOW, with a total value of about \$350,000. We had concerns about the form of each of these contracts, and for four of them we were also concerned about the method of issuance.

All the contracts were structured as lump sum payments rather than fees for service. The government's *General Management Operating Policy* states that, wherever possible, variable price contracts with an established unit price and a firm contract ceiling price should be negotiated, and that fixed price contracts should be avoided where variable price contracts can be negotiated. One important purpose of this policy is to help contract managers and other reviewers determine whether value for money was obtained under a contract. This determination is easier when costs are broken down and can be matched to deliverables, and when individual cost elements can be scrutinized to see that they are reasonable. Because they lack this supplementary information, lump sum contracts make it more difficult to assess whether good value was received for the sums paid.

Four contracts, the retainer contracts, were structured as quarterly contracts with no time periods between them. The work was similar and the period of contracting continuous. Officials involved in the contract issuance told us that the contracts were separate because the service supplier preferred quarterly contracts, and because both the officials and the service supplier wanted the chance to periodically review the success of the contractual relation and decide whether to renew it. We do not believe this is sufficient reason to separate the contracts, since standard government contract language gives the government the right to terminate contracts with ten days notice or less, and the supplier's desire for periodic review could have been incorporated into the contract. In our opinion, a single contract should have been issued, either at the beginning of the contract relationship or, at least, once the first contract had been in place long enough for the Public Issues and Consultation office to decide whether to continue the relationship.

A single contract or related series of contracts that in total exceeds \$100,000 must be approved by the Secretary to Treasury Board, according to *General Management Operating Policy*. This was not done until April 1995, after the retainer contracts had expired. Nor was the retainer work tendered, even though the total amount paid was over the threshold amount of \$50,000. It is possible to make an argument that the nature of the work being contracted makes tendering impractical. However, we do not believe that the scrutiny afforded by prior approval of the Secretary to Treasury Board should have been bypassed.

## Ministry of Employment and Investment

Of the seven contracts which this ministry (including the Crown Corporations Secretariat) had with NOW, with a total value of about \$400,000, we had concerns about the tendering method used for five of them. We also found an instance of pre-billing and an instance of re-billing.

Crown Corporations Secretariat, which is now included in this ministry, issued a contract to NOW to provide strategic services and communications support for the provincial proposal for Hastings Park in Vancouver, the site of the PNE. The contract, for \$99,000, was issued by direct award. As the contract was for over \$50,000 and we did not find sufficient mitigating circumstances, we conclude that GMOP guidelines should have been followed and that this contract should have been tendered.

The Ministry of Employment and Investment directly awarded four contracts to NOW for communications work for its BC 21 agency. The contract amounts were \$90,000, \$30,000, \$100,000, and \$50,000. We found that the description of services in at least three of these contracts was similar, as was the mix of services and products actually delivered. NOW treated the contracts as one job in its own internal records; so did the ministry, in at least one instance, in the way it made payments. The \$90,000, \$100,000, and \$30,000 contracts overlapped for two months. We concluded that at least three, and possibly all four, contracts should have been treated as one contract, large enough to fall within the tendering guideline and to require



approval by the Secretary of Treasury Board. The ministry disagrees, and stands by its decision to have separate contracts.

We also found an instance of pre-billing. In a pre-billing, the contractor submits an invoice for work that has not yet been done. If a pre-billing occurs at the fiscal year-end, it has the effect of allowing funds in a ministry's annual budget that otherwise would lapse to be carried forward to the next year.

NOW told us that they had received payment for a pre-billed invoice in March 1994. The pre-billing, for approximately \$45,000, related to the \$100,000 BC 21 contract discussed above. Ministry staff told us that in their opinion the invoice was not a pre-billing, that the goods and services they received prior to the billing were sufficient to satisfy them that they were authorizing payment for work already done.

We have concluded from the evidence that a pre-billing occurred. NOW continued after March to do work for the ministry, applying the work against the credit it saw itself as owing to the ministry. In this manner NOW continued to do work for the ministry for 11 months without submitting further invoices.

NOW showed us a record they had kept which detailed the work they had charged against the credit they saw as owing to the ministry. We were able to reconcile these records with NOW's time records, and with products delivered to the ministry under this contract, sufficiently to lead us to conclude that at least the majority of the work charged for under the invoice was carried out subsequent to the date of the invoice, as NOW had reported.

However, we were unable to determine the circumstances that led

to the pre-billing, or to resolve the question of whether the pre-billing had been authorized by the ministry. NOW states that it was instructed to pre-bill by the ministry. Ministry staff state that they were unaware a pre-billing had occurred and had not approved it.

We also found one instance, totalling about \$3,000, where re-billing occurred, on a \$14,000 telecommunications contract. Re-billing is when a contractor charges again for expenses that were previously rejected by government financial staff because, for example, the expenses were incurred before the date on which the contract formally began. NOW stated that the expenses were legitimately incurred, and we accept this. We were, however, unable to clarify the question of authorization. NOW stated that ministry staff had authorized the re-billing; ministry staff stated that they did not know of the re-billing and did not authorize it.

## Ministry of Health

Prior to our review there had been public discussion, based upon information released under the *Freedom of Information and Protection of Privacy Act*, suggesting that there may have been weaknesses in the administration of NOW's contracts with the Ministry of Health. Accordingly, we examined these contracts in detail.

The Ministry of Health issued seven contracts to NOW, with a total value of about \$2 million. We concluded that, overall, there was no cause for concern with the issuance of these contracts. We did, however, find two transactions that concerned us because of the nature of their invoicing, and one minor example of re-billing.

### *Invoicing*

For the Health “agency of record” contract, NOW used Mellman, Lazarus, and Lake (Mellman), a polling firm in Washington, D.C., to assist it in developing a poll on health issues. The Ministry of Health’s director of communications was aware that the polling firm was being used but unaware of how the costs would be recovered by NOW. The invoice that NOW issued to the ministry to recover the cost of hiring Mellman did not disclose that this was its purpose. Instead, the invoice stated that it was for time worked by NOW staff. The stated number of hours worked times the hourly rates charged for those staff equalled the amount that NOW was billed by Mellman.

In support of its work with the ministry, NOW also subcontracted a small portion of the work to Struble-Totten, a communications firm from Washington, D.C. Most of this subcontract was related to NOW’s work for the Ministry of Health, the rest to its work for two other ministries (Forests, and Employment and Investment). As with the Mellman contract, NOW recovered the costs of its contract with Struble-Totten by billing in a manner which indicated that the work had been done by NOW’s own staff. Ministry of Health staff were aware of the use of Struble-Totten, but not of the way in which these services were billed. Staff in the Ministry of Forests and Ministry of Employment and Investment were not aware of either the use of Struble-Totten or the method of billing.

In explaining to us why it had billed these two transactions in this

way, NOW stated that the clear understanding it had received was that the government preferred to avoid making public the use of American service suppliers.

We found one invoice that included \$225 of re-billing. NOW stated that the expenses were legitimately incurred, and we accept this. We were unable to resolve the question of authorization: NOW stated that ministry staff had authorized the re-billing, but ministry staff stated that they did not know of or authorize it.

### *Contract Tendering*

We concluded that although the Ministry of Health’s pattern of contract issuance to NOW was not a textbook model of communications contracting, it was acceptable given all the circumstances.

Following is a description of how the various contracts were issued, and what we considered in reaching our conclusion.

The ministry’s first contract with NOW was issued in September 1992. At that time, doctors in the Province were promoting an opting-out position, and a communications initiative was needed to explain the government’s position on the controversy. However, Health’s public affairs director had left the ministry in June 1992 (the ministry did not find a replacement until December 1992), and other important positions in the communications unit were also vacant. A communications specialist from the Government Communications Office was asked for advice by the ministry and suggested that NOW be given a contract of \$83,288 to develop a communications plan.



Several months later, the government decided that a communications program was needed to inform the public about its New Directions initiative. In January 1993, again at the suggestion of an advisor from the Government Communications Office, NOW was directly awarded a contract of \$205,000 for this work.

In March 1993, ministry officials decided that a wide range of communications services was needed. The contract for this work, sometimes described as “agency of record” for the ministry, was tendered competitively. (This is not to be confused with the government-wide Agency of Record, through which all advertising is placed in publications and on radio or TV. In this case, “agency of record” is used to mean the lead agency for the ministry, one that it can call upon for a wide range of communications services.)

The ministry was unable to provide us with the evaluation documents from the panel’s proceedings, but we interviewed three of the four panel members and all told us that NOW was the unanimous choice. The company was awarded a contract for \$850,000, covering the period from June 1993 to March 1994. The contract was subsequently extended to March 1995 for an additional \$650,000 of work.

As part of the evaluation, bidders were asked to answer four written questions to demonstrate their understanding of current health care issues. By that time, NOW had been working on health issues under the contracts directly awarded to it for more than six

months, but the degree to which this gave it an advantage in answering these questions we do not know.

Each year, the Ministry of Health runs a public education campaign during Drug Awareness Week. At the same time NOW was winning the competition for the 1993 “agency of record” contract, staff in the ministry’s Prevention and Promotion Services program were preparing to tender the annual Drug Awareness Week campaign, as had been done in the prior two years. It was planned that the contract awarded under this competition would cover a three-year period, provided the contractor continued to perform to the ministry’s satisfaction.

Instead of tendering, the ministry’s Communications Branch recommended that the contract be awarded directly to NOW. The rationale was that having one firm work on both contracts would provide some efficiencies and, more importantly, a consistency of approach between the two contracts. Staff in the Prevention and Promotion Services program indicated to us that awarding the contract to NOW without competition was acceptable. It made sense in light of the strategic communications planning and community-based approach that NOW was proposing for the “agency of record” work. Staff wanted a similar approach used for the Drug Awareness Week campaign.

In assessing the appropriateness of the ministry’s direct awarding of contracts to NOW, we considered the timing of the contracts, the nature of the





work, and the nature of the decision process.

Timing was important on the first two contracts, which had to be issued quickly in response to newly arisen public communications problems. Timing was also important internally to the ministry: at certain critical periods the ministry could not make full use of its own communications unit because of senior staff vacancies.

The nature of the work that NOW did was also important. NOW's specialty, social marketing, was appropriate to the ministry's communications needs. The ministry was satisfied with the work NOW had done on previous contracts. Both of these would be reasonable factors for the ministry and its advisors to consider when deciding on a contractor.

The evidence we have is persuasive that decisions on how to issue contracts were not made arbitrarily. For example, before issuing the second direct award (January 1993) the ministry had searched for alternatives and tried other contractors before settling on NOW.

It is possible that NOW had an advantage over other firms in the "agency of record" competition by virtue of its previous work on health contracts. However, if NOW knew more about its customer's needs and business because of previous contracts, then its services would be, arguably, more valuable to the ministry. We noted similar situations in which other agencies, having developed special skills in serving a ministry as a result of work on direct award contracts, were able to win later tendered contracts.

## Ministry of Forests

Prior to our review there had been public discussion, based upon information released under the *Freedom of Information and Protection of Privacy Act*, suggesting that there may have been weaknesses in the administration of NOW's contract with the Ministry of Forests. Accordingly, we examined this contract in detail.

We concluded that, overall, there was no cause for concern with the issuance of or administration of this contract. Although the administration of the contract was complicated and communication at times heated, staff involved ensured that deliverables satisfied the terms and conditions of the contract and that spending was controlled.

The public concerns expressed about this contract may have resulted from misunderstandings regarding the structure of the contract.

All NOW's work for the Ministry of Forests is covered by one tendered contract, with a maximum value of about \$1.2 million. Ministry management chose a single contract to ensure that communications about a wide range of forestry issues facing the government—including the implementation of the Forest Practices Code and Forest Renewal Plan and response to public concerns about Clayoquot Sound and to international concerns about provincial forest practices—would be handled in a consistent and integrated way.

This contract had two special features: it was a standing contract, and it was jointly administered.

A standing contract has two parts:



- a general contract that sets out broad terms and conditions, but does not authorize spending; and
  - a set of addenda that authorize spending on specific projects within the general contract,
- with a maximum allowable for each specific project.
- The general contract sets the maximum expenditure, but any spending against that maximum must be authorized by an addendum. Exhibit 3 shows how this was done.

## Exhibit 3

### Approved Expenditures Under NOW's Contract with the Ministry of Forests

*This table shows when the contract was extended in time or value, and when expenditures under the contract were approved*

Date of Approval	Description	Contract Maximum (\$)	Approved Expenditures (\$)
23 September 1993	Interim contract, while awaiting Treasury Board approval of standing contract; approval was received 28 October 1993	75,000	75,000
28 October 1993	Standing contract: to 31 March 1994	500,00	
22 November 1993	Addendum: Forest Practices Code launch follow-up, initial work on open houses, public attitude research on Clayoquot		156,600
29 November 1993	Addendum: report and communications plan for possible European boycott		10,000
30 November 1993	Addendum: analysis of reader responses to Forest Practices Code discussion paper		18,000
19 January 1994	Addendum: quantitative research, material for international audiences, initial communication plan for Phase II Forest Practices Code		126,300
24 March 1994	Addendum: remaining open house ads, planning for possible international boycotts		32,000
March/April 1994	Extension: to 15 July 1994	75,000	
6 July 1994	Addendum: quantitative research, qualitative research, strategic planning and preparation of materials for launch of Forest Renewal Plan.		316,801
7 October 1994	Extension: to 31 March 1995	575,000	
7 October 1994	Addendum: four TV ads, a newsletter, update of the Answer Book, qualitative research, print ads		235,000
	<b>Total</b>	<b>1,225,000</b>	<b>969,701</b>
	<b>Total payments to 31 March 1995</b>		<b>784,182</b>

Joint administration meant that both the Ministry of Forests and the Government Communications Office could authorize expenditures under the contract. Such an arrangement, which is not often used in the provincial government, was chosen in this case because many forestry issues involved the government as a whole rather than just the ministry. Also, the Government Communications Office was paying part of the cost. Joint administration meant that it could retain control over expenditures from its own budget. When the Ministry of Environment, Lands and Parks became involved in developing the Forest Practices Code, it also budgeted funds for communications work on the code. As a result, a three-way agreement was reached, under which the Government Communications Office would pay one-half of the costs under the NOW contract, and Forests and Environment would pay one-quarter each.

Deciding which costs were joint costs and which should be paid by only one party, and arranging for the parties to remit their share of costs, required extensive communication inside government. Much of this communication has been publicly released, and parts of it, when seen out of context, may have given a misleading impression of the contract management process.

### Question 3: Accountability

***Have payments made to NOW been classified and reported appropriately by the government?***

#### Conclusion

A number of contracts issued by the Public Issues and Consultation

office were structured in a way that masked the true nature of the contract, and thus frustrated good public accountability.

### Public Issues and Consultation Office

Eight of the Public Issues and Consultation office's contracts with NOW (all but the January 1993 contract for \$40,000) cause us concern, not because of the work actually done under the contracts, but because of the way this work was shielded from public scrutiny.

#### *What Was Concealed?*

These contracts masked, from all but those directly involved, the use of contractors who might be considered controversial. These contracts were documented as if NOW were the service provider even though other, unacknowledged contractors provided most or all of the services. Two such contractors were involved: Mr. Hans Brown (in one contract), and the firm of Struble-Totten and its principal Mr. Karl Struble (in the other seven).

We believe that evidence of Mr. Brown's employment was probably minimized because of his former position as provincial secretary of the New Democratic Party. We believe that evidence of the use of Mr. Struble and his firm was similarly minimized both because of Mr. Struble's being an American and because he had performed work for the New Democratic Party during the 1991 election campaign. We were unable to find documentary evidence that such concealment was intended; such documentation would be unusual. However, NOW understood that their government customers did





not want the use of American suppliers to be disclosed.

#### *From Whom Was It Concealed?*

There was no concealment from the public servants who contracted for and received the services. Nor was there a disguising of the physical presence in the Province of the service suppliers. Mr. Brown's work included meeting with stakeholders in the health industry, who would have known his identity and that he was acting on behalf of government. Mr. Struble's work included directing television shows for the government, and there was no concealment of his identity and function from those involved in the production of the shows or from media representatives covering the production.

So, the relatively small number of people in contact with the service suppliers knew of them and their work. However, the public record does not tell the same story.

Openness in government means more than that citizens can—with enough skill and enough effort—tease out a few facts about government activities. Openness means that appropriate information is either directly accessible through the public record or that the existence of the information is part of the public record and the information itself is available on request.

An essential, and long-established, vehicle for such openness is the detailed schedules published as part of the Province's *Public Accounts*. Their existence highlights an important distinction between public business and

private business: citizens have the right to know who benefits economically from government expenditure. Each year the *Public Accounts* detail:

- the salaries paid each mid-level and senior public servant;
- the amounts paid to each organization that has obtained a government grant; and
- the amounts paid to each business or professional firm that has carried out work for the government.

This reporting is a settled tradition, and a valuable foundation of open government.

The *Public Accounts* do not disclose the amounts Mr. Brown received for the work discussed here. Nor do they include any reference at all to either Mr. Struble or his firm. (Struble-Totten was in fact paid directly by government for expenses unrelated to these contracts, but the amount paid was less than the threshold for inclusion in the schedules.) Because of the way these contracts were structured, the intent behind *Public Accounts* disclosure was defeated.

#### *Reasons For Our Conclusion*

The circumstances of these contracts make it clear that NOW was not truly a prime contractor making supplementary use of a sub-contractor.

First, NOW was not primarily responsible for choosing the unacknowledged contractors or for negotiating the contracts entered into in NOW's name. For example, it is clear from our interviews, and from testimony given to Mr. Hughes during his inquiry, that



although NOW knew Mr. Struble and the quality of his work, the choice of Struble–Totten for this work was made primarily by NOW’s client—the Public Issues and Consultation office. Similarly, the client took the lead in contract negotiations, NOW’s role being restricted to negotiating a fee for supplying minor support services to Mr. Struble.

Second, NOW had little direction or control over the work of the unacknowledged contractors. For

example, interviews and testimony, along with telephone logs, make it clear that NOW’s client, not NOW, was directing or controlling Mr. Struble’s work.

Finally, NOW did very little of the work carried out under the contracts. Its limited involvement in providing the Struble–related services is evidenced by its limited share of the total compensation, as shown in Exhibit 4.

## Exhibit 4

### Public Issues and Consultation Office Contracts Involving Payments by NOW to Struble–Totten

*This table shows payments made by NOW to Struble–Totten, and the Public Issues and Consultation office contracts to which they relate*

Contract Term	Contract Purpose	Paid or Payable to NOW (\$)	Paid or Payable from NOW to Struble–Totten (\$)
January 1993	Budget/TV	40,000	18,678
April 1993 – December 1993	Budget/Legislative priorities	35,640	33,364
January 1994	TV/Asia/Social assistance	45,000	45,000
February 1994 – March 1994	Budget/TV	35,500	35,500
April 1994 – June 1994	Key public concerns (retainer)	34,500	30,000
July 1994 – September 1994	Key public concerns (retainer)	34,500	30,000
October 1994 – December 1994	Key public concerns (retainer)	34,500	30,000
January 1995 – March 1995	Key public concerns (retainer)	34,500	30,000
	<b>Total</b>	<b>294,140</b>	<b>252,542</b>





## Appendix

### List of Contracts Between NOW and the Government of British Columbia

*This table shows all contracts between NOW and the provincial government, along with all payments made under these contracts, up to March 31, 1995<sup>(a)</sup>*

Contract Term	Purpose <sup>(a)</sup>	Contract Amount (\$)	Payments (\$)
<b>Ministry of Attorney General</b>			
May 1992	Traffic safety	30,000	30,000
March 1994 – April 1994	Standard tendering honorarium	1,000	1,000
	<b>Total</b>	<b>31,000</b>	<b>31,000</b>
<b>Ministry of Education</b>			
April 1992 – June 1992	Speech writing	<b>5,400</b>	<b>5,400</b>
<b>Ministry of Employment and Investment</b>			
January 1993 – March 1993	Crown Corporations Secretariat re: Hastings Park*	99,000	18,317
August 1993 – September 1994	BC 21*	90,000	83,512
September – March 1994	BC 21 signage*	30,000	22,935
February 1994 – March 1994	BC 21 marketing*	100,000	80,773
April 1994 – March 1995	BC 21 programs*	50,000	0
June 1994 – August 1994	Telecommunications*	14,000	7,814
July 1994 – December 1994	Telecommunications	33,000	27,343
	<b>Total</b>	<b>416,000</b>	<b>240,694</b>
<b>Ministry of Finance and Corporate Relations</b>			
August 1992 – October 1992	BC Savings Bonds	500,000	491,922
April 1993 – May 1993	Post-budget	45,000	41,409
December 1993 – February 1994	Pre-budget	25,000	24,967
February 1993 – March 1994	Post-budget	50,000	44,298
May 1994 – June 1994	Advertising re: first-time home buyers	2,000	1,826
January 1995 – March 1995	Budget research and consultation	4,000	0
February 1995 – March 1995	“The Balance Sheet”	21,000	0
February 1995 – March 1995	“Budget ‘95 Guide”	24,600	0
	<b>Total</b>	<b>671,600</b>	<b>604,422</b>

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Contract Term	Purpose <sup>(a)</sup>	Contract Amount (\$)	Payments (\$)
<b>Ministry of Forests</b>			
October 1993 – March 1995	Ministry “agency of record”*	<b>1,225,000</b>	<b>784,182</b>
<b>Ministry of Government Services: Government Communications Office</b>			
February 1992 – March 1992	CORE campaign	165,000	153,793
October 1992	TV interview	5,500	4,586
November 1992 – December 1992	Word mark	6,000	5,371
February 1993 – April 1993	Commonwealth Games planning	10,000	8,251
March 1993	TV broadcast	15,000	15,000
June 1993 – July 1993	Aboriginal Affairs ads	20,000	19,338
September 1993 – March 1994	Premier’s cable/speech	25,000	1,450
November 1993	Ads for “Mike Live”	4,686	4,686
March 1994	Pre-speech ads	20,000	11,569
June 1994	Premier’s speech re CORE	4,476	4,476
July 1994 – August 1994	Commonwealth Games TV	55,000	48,398
November 1994	Cariboo radio and print	7,500	7,450
	<b>Total</b>	<b>338,162</b>	<b>284,368</b>
<b>Ministry of Government Services: Public Issues and Consultation Office</b>			
November 1992 – March 1993	Health care reform*	55,000	50,198
January 1993	Budget/TV*	40,000	40,000
April 1993 – December 1993	Budget/Legislative priorities*	35,640	35,640
January 1994	TV/Asia/Social assistance*	45,000	45,000
February 1994 – March 1994	Budget/TV*	35,500	35,500
April 1994 – June 1994	Key public concerns (retainer)*	34,500	34,500
July 1994 – September 1994	Key public concerns (retainer)*	34,500	34,500
October 1994 – December 1994	Key public concerns (retainer)*	34,500	34,500
January 1995 – March 1995	Key public concerns (retainer)*	34,500	11,685
	<b>Total</b>	<b>349,140</b>	<b>321,523</b>
<b>Ministry of Government Services: Other</b>			
November 1993 – February 1994	Sports discussion paper	<b>9,234</b>	<b>9,223</b>

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Contract Term	Purpose <sup>(a)</sup>	Contract Amount (\$)	Payments (\$)
<b>Ministry of Health</b>			
September 1992 – March 1993	Access to medical care/BCMA*	83,288	83,010
January 1993 – March 1993	New Directions in Health*	205,000	180,865
May 1993	BCMA/Shaghnessy Hospital	9,919	9,919
June 1993 – March 1994	Ministry “agency of record”*	850,000	785,332
April 1994 – March 1995	Ministry “agency of record”*	650,000	581,992
July 1993 – March 1994	Drug Awareness Week*	120,000	119,990
July 1994 – March 1995	Drug Awareness Week*	110,000	78,563
	<b>Total</b>	<b>2,028,207</b>	<b>1,839,671</b>
<b>Ministry of Skills, Training and Labour</b>			
April 1994	Labour Relations Board brochure	4,375	4,375
November 1994	Advertising in Prince George/ Town Hall Meeting	5,297	5,297
	<b>Total</b>	<b>9,672</b>	<b>9,672</b>
<b>Ministry of Small Business, Tourism and Culture</b>			
November 1992	Standard tendering honorarium	<b>5,000</b>	<b>5,000</b>
<b>Ministry of Social Services</b>			
August 1992 – March 1993	Foster parent recruitment	87,343	22,644
September 1993 – December 1993	Fostering teens, siblings	10,550	9,730
	<b>Total</b>	<b>97,893</b>	<b>32,374</b>
<b>Ministry of Transportation and Highways</b>			
May 1992 – June 1992	TV public service announcement	<b>38,400</b>	<b>38,400</b>
<b>Ministry of Women’s Equality</b>			
June 1993 – July 1993	Employment equity plan	3,500	3,458
August 1993 – March 1994	Employment equity communications	95,782	88,583
February 1994 – March 1994	Stopping the Violence	4,000	3,738
	<b>Total</b>	<b>103,282</b>	<b>95,779</b>

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Contract Term	Purpose <sup>(a)</sup>	Contract Amount (\$)	Payments (\$)
<b>Legislative Assembly (Government Caucus)<sup>(c)</sup></b>			
Various	Various	156,251	156,251
	<b>Grand Total</b>	<b>5,484,241</b>	<b>4,457,959</b>

<sup>(a)</sup>Some minor transactions were carried out without formal written contracts. We have included them as contracts in this listing; using the month in which the invoice was presented as “Term,” and the invoice amounts as both “Contract Amount” and “Payments.”

<sup>(b)</sup>Contracts accompanied by \* are discussed in the body of the report.

<sup>(c)</sup>These payments were included for completeness. We have the right to examine such transactions under the *Auditor General Act*, but are sensitive to the prerogatives of the Legislative Assembly. Our examination was sufficient to satisfy us that the transactions under this account had no apparent connection with any contracts between government ministries and NOW.

