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**Complaint on Contract Awards – Offshore Oil and  
Gas Team**

**Ministry of Energy and Mines**

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**Internal Audit & Advisory Services  
Office of the Comptroller General  
Ministry of Finance**

March 2004

## **Distribution**

### ***Full Report***

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## Executive Summary

On February 23, 2004, Stuart Hertzog, President of the Sea Watch Ecological Society advised the Comptroller General for the Province, of concerns that BC's Offshore Oil and Gas Team (the Team) had awarded untendered contracts.

The objectives of the review were to examine each of the nine agreements totalling \$1.4 million that were in place at the time of our review to determine:

- the purpose of the agreement and if the method of funding complied with policies; and
- the process used for awarding the funding and whether or not best practices were followed.

### Conclusions

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#### Purpose of the Agreement

The Team used contribution agreements to fund these initiatives. This funding mechanism is used when the Province wishes to provide a grant of money to an organization but also wants to place conditions on how the funding is used. Policy stipulates that the Province not receive goods or services directly in return.

In eight of the nine agreements the Province did not receive any goods or services directly in return. These eight are properly characterized as contribution agreements. The ninth agreement did not fully comply with policy, however the dollar value associated with the non-compliance was insignificant.

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#### Method for Awarding Contribution Agreements

The agreements entered into were untendered. The process used by the Team to award the contribution agreements was to work with those organizations that submitted unsolicited proposals in an iterative fashion until the proposal and budget met the Team's requirements. However, these requirements were not pre-stated or publicly available.

The Province's policy for contribution agreements does not require a competitive process be used. Therefore, the Team did not breach government policy.

However, we believe, as others do, that the best practice would be to advertise the availability of, and the criteria for receiving, contribution agreements. We have made a recommendation to this effect.

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The Team has now developed the basic criteria that will be used to evaluate future proposals for contribution agreements and has posted the criteria on its website. We encourage this effort.



We would like to thank the management and staff of the Offshore Oil and Gas Team for their assistance and co-operation in our review.

Ian Birch  
Director, Operations  
Internal Audit & Advisory Services

September 20, 2004

## Introduction

### The Complaint

On February 23, 2004, Stuart Hertzog, President of the Sea Watch Ecological Society advised the Comptroller General for the Province, of concerns that BC's Offshore Oil and Gas Team (the Team) had awarded untendered contracts.

He was particularly concerned about two organizations, Pacific Offshore Energy Association and Pacific Coast Offshore Oil and Gas Association (which he believes may be lobby groups that are not registered under BC's *Lobbyists Registration Act*). Stuart Hertzog wrote:

"The money is for these two Associations to hold five public information meetings extolling the ability of the energy industry to safely explore for oil and gas on the BC coast. We believe that the information presents a one-sided view of the risks of offshore energy exploration.

Conversations with the Communications Officer of the Oil and Gas Team have revealed that no formal process was followed in awarding these contracts, and that they were neither advertised nor put out to tender on BC Bid. Other groups and associations are equally capable of providing public information on offshore exploration issues, but were not given a chance to do so."

### Scope and Approach

The scope of this review was to examine the agreements brought to our attention by the complainant, and other agreements of a similar nature, greater than \$5,000, that were in place at the time of our review. Table 1 lists the agreements we reviewed.

**Table 1 – List of Agreements Examined**

Organization	Agreement #	Agreement Amount
1. Pacific Offshore Energy Association	CA73804027	133,000
2. Pacific Coast Offshore Oil and Gas Association	CA73804033	129,563
3. Huu-Ay-Aht First Nation	CA73804004	259,721
4. Huu-Ay-Aht First Nation	CA73804018	380,279
5. BC Seafood Alliance	CA73804028	45,500
6. BC Aboriginal Fisheries Commission	CA73804007	92,115
7. Tsimshian Tribal Council	CA73804031	250,000
8. Turning Point Initiative Society	CA73804009	100,000
9. Canadian Centre for Energy Information	CA73804032	18,000
<b>TOTAL</b>		<b>\$1,408,178</b>

For each of these nine agreements we examined:

- the purpose of the agreement to determine if the method of funding complied with government policies; and
- the process used for awarding the funding and whether or not best practices were followed.

We did not assess the agreements for value received or compliance with the specific conditions of the agreements. We concentrated on the concerns of the complainant.

We also did not explore the concern that two of the organizations (Pacific Offshore Energy Association and Pacific Coast Offshore Oil and Gas Association) are unregistered lobby groups, as the complainant has also written directly to the Office of the Lobbyist Registrar.



## Background

The BC Offshore Oil and Gas Team was established in January 2003 by the Province to "enable offshore oil and gas development to occur in BC in a scientifically sound and environmentally responsible manner".<sup>1</sup> The Team reports to a Deputy Minister, who reports to the Minister of Energy and Mines.

The funding for the Team for 2003/04 (\$5.64 million) was appropriated through the Legislature through the Energy and Mines appropriation (Vote 20). The purpose was stated as "this core business provides for assessment and implementation of offshore oil and gas exploration and development, including negotiating necessary fiscal, regulatory and environmental management arrangements with the Federal government. Transfers are provided for investigation of offshore oil and gas development".<sup>2</sup>

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<sup>1</sup> BC Offshore Oil and Gas Team, Project Plan, May 2003, posted on their website: [www.offshoreoilandgas.gov.bc.ca/whats-new/May03rojectPlan.pdf](http://www.offshoreoilandgas.gov.bc.ca/whats-new/May03rojectPlan.pdf)

<sup>2</sup> British Columbia, Estimates - Fiscal Year Ending March 31, 2004

# Observations, Conclusions and Recommendations

## 1.0 Purpose of the Agreements

The Team used contribution agreements (classified as Transfer Payments under Agreement in the Estimates) to fund these initiatives. This form of funding is used when the Province wishes to provide a grant of money to an organization but also wants to place conditions on how the funding is used.

The Province's policy for contribution agreements is significantly different than for professional service contracts. Our first analysis, therefore, was to determine if these were contribution agreements or contracts to obtain goods or services.

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Policy

The Province's Core Policy Manual defines Transfer Payments as follows:

Transfer payments (includes contribution agreements) are transfers of money from the Province to an individual, an organization or another government for which the Province does not receive any goods or services directly in return, does not expect to be repaid in the future, and does not expect a financial return.<sup>3</sup>

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Was a Direct Service Received?

Appendix I analyzes, for each agreement, what the key deliverables were, who the main recipients of the goods or services were and whether or not the Province directly received goods or services.

The Core Policy Manual does not provide any further definition of what would constitute "any goods or services directly in return". Contribution agreements are provided subject to specific conditions being met. Usually these conditions revolve around ensuring that the funds are spent only on approved activities and therefore, a common condition is that reports be submitted that substantiate the use of funds or provide evidence that the approved activities were performed. These reports would not be considered "direct goods or services." Therefore, the criteria we have used to evaluate whether or not these contribution agreements provided direct goods or services to the Province are as follows:

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<sup>3</sup> British Columbia, Core Policy and Procedures Manual section 4.3.14

- the recipients of any service provided under the agreement were people or groups who were not part of the provincial government;
- any reports received by the Province were only for the purpose of ensuring that the agreements' conditions had been met.

If both of these conditions were met, we consider the agreement to be a contribution agreement and not a contract to obtain goods or services.

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## Conclusion

In eight of the nine agreements the Province did not receive any goods or services directly in return. Any reports received were for the purpose of ensuring that the organization fulfilled their obligations under the agreements. These eight are properly characterized as contribution agreements.

The agreement with the BC Seafood Alliance did state that the intent of producing the independent research paper was so that it could be used by both the seafood sector and the Team to give a credible, layperson's overview of the issues. This did provide a direct service to the Province. A mitigating factor is that the research paper was the lessor of the deliverables - 14% (\$6,580.50 / \$45,500) of the total agreement amount, with the workshop accounting for the remainder of the funding.

Although the preparation of the research paper could have been treated as a separate professional services contract, in our opinion it was reasonable to include it as part of the contribution agreement because it formed an integral part of the workshop.

The purposes of all of the contribution agreements fall within the mandate and project plan of the Team.

## 2.0 Method for Awarding Contribution Agreements

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### Process Used

The process used by the Team to award the contribution agreements was described to us as follows:

- beginning at the time the Team was created, inquiries and unsolicited proposals were received by the Team without solicitation;

- these proposals were deferred (with the exception of the first Huu-Ay-Aht First Nations agreement) until the Team had the opportunity to work through how it wished to proceed and developed its Project Plan; and
- the proposals and associated budgets initially received were not always clear or presented in enough detail. The Team worked with those organizations in an iterative fashion until the proposal and budget met the Team's requirements. However, these requirements were not pre-stated or publicly available.

As this was an informal process, there was no documentation of the steps followed for us to review.

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#### Best Practice

The Province's policy for transfer agreements does not require a competitive process be used to award contribution agreements. Therefore, the Team acted within government policy.

However, general guidance can be taken from the Core Policy Manual's objectives for government procurement, which include:

- Vendors have fair access to information on procurement opportunities, processes and results;
- Acquisition and disposal opportunities are competed, wherever practical;
- Ministries are accountable for the results of their procurement decisions and the appropriateness of the processes followed; and
- The cost of the procurement process, to both vendors and ministries, is appropriate in relation to the value and complexity of each procurement.<sup>4</sup>

Those from whom we sought guidance<sup>5</sup> advised that the best practice would be to advertise the availability of, and the criteria for receiving, contribution agreements, unless a direct award was justified under one of the exceptional conditions specified in the Core Policy Manual for contracts.

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<sup>4</sup> British Columbia, Core Policy and Procedures Manual, section 6.1.

<sup>5</sup> Financial Management Branch and the Procurement Governance Office, both with the Office of the Comptroller General; and the Procurement and Supply Services, Ministry of Management Services.

For contracted acquisition of goods, services and construction, the Province's Core Policy Manual allows direct awarding without competitive process only when one of the following exceptional conditions applies:

- The contract is with another government organization;
- The ministry can strictly prove that only one contractor is qualified to provide the goods, services or construction or is capable of engaging in a disposal opportunity;
- An unforeseeable emergency exists and the goods, services or construction could not be obtained in time by means of a competitive process;
- A competitive process would interfere with a ministry's ability to maintain security or order or to protect human, animal or plant life or health; or
- The acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to the public interest.<sup>6</sup>

To determine if direct awarding would be considered best practice, we applied the above criteria to these contribution agreements. In our opinion, the Huu-Ay-Aht First Nation and the Tsimshian Tribal Council may have been the only "contractor" qualified to provide the services noted in the awarded agreements. As a result these awards would have complied with policy.

It is our opinion that the other agreements do not meet the direct award conditions. Although each of the organizations selected had connections to targeted audiences (e.g., geographically, culturally, or a common industry) there may be other organizations which could have achieved the same purposes and met the conditions required by the Team.

The Team did use an iterative process with the organizations that submitted unsolicited proposals in order to develop those proposals and their associated budgets to a standard acceptable to the Team. The same ends could be achieved in a fair and transparent manner by developing the criteria in advance, publishing the availability of the funding and the criteria that will be

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<sup>6</sup> British Columbia, Core Policy Manual section 6.3.3.a.1.

used when making the funding decisions. The Team would still have the ability to set criteria (such as targeted audiences) necessary to meet its service plan.

The Team has now developed the basic criteria that will be used to evaluate future proposals for contribution agreements and has posted the criteria on its website. We encourage this effort.

### **Recommendation**

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**(1) We recommend that the Team advertise the availability of, and the criteria for receiving, contribution agreements.**

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Implementation of this recommendation brings with it, of course, the risk of receiving proposals that lack merit, but create workload because they must be reviewed. Hopefully, as the Team learns what is effective through this process they will develop criteria that will be able to screen out inappropriate or unacceptable proposals. The benefit of implementing this recommendation will be a transparent and accountable process that will be easy to defend.

Contribution agreements are a major method the Province uses to provide funding<sup>7</sup>, yet there is no policy in the Core Policy and Procedures Manual on how to award contribution agreements. Centralized policy would provide the framework for better transparency and accountability in the Province's use of contribution agreements.

### **Recommendation**

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**(2) We recommend that the Financial Management Branch of the Office of the Comptroller General, Ministry of Finance, develop policy on the awarding of contribution agreements.**

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<sup>7</sup> The Estimates for the fiscal year ending March 31, 2004 allowed for \$5.4 billion to be provided through contribution agreements.

## Appendix I – Did the Province Directly Receive Goods or Services?

Organization / Agreement Amount	Summary of Key Deliverables	Main Recipients of Goods or Services	Did Province Directly Receive Goods or Services?
Pacific Offshore Energy Association \$133,000	<ul style="list-style-type: none"> <li>• Design &amp; conduct five 3-hour information sessions to the public in mid &amp; north Vancouver Island communities to provide factual, objective information on the Offshore Oil &amp; Gas industry as it would apply to BC.</li> <li>• Make information available to communities via hard copy and web site.</li> </ul>	The public in the mid & north Vancouver Island communities	No
Pacific Coast Offshore Oil & Gas Association \$129,563	<ul style="list-style-type: none"> <li>• Design &amp; conduct up to eight 3-hour information &amp; education sessions to the public in North Coast &amp; Queen Charlotte communities on such topics as:               <ul style="list-style-type: none"> <li>o resource &amp; resource potential;</li> <li>o environmental considerations;</li> <li>o industry facts;</li> <li>o offshore technology;</li> <li>o role of regulation or rules under which an industry might operate; and</li> <li>o local direct &amp; indirect benefits.</li> </ul> </li> <li>• Make information available to communities via hard copy and web site.</li> </ul>	The public in North Coast & Queen Charlotte communities	No
Huu-Ay-Aht First Nation Two agreements totalling \$640,000	<ul style="list-style-type: none"> <li>• To conduct a culture &amp; heritage study of marine resource sites &amp; activities in traditional offshore areas of the Huu-Ay-Aht First Nation, the Uchuckleasaht Tribe, the Ucluelet First Nation, the Toquaht Nation, the Kyuquot &amp; Checklesah Nation.</li> </ul>	The Huu-Ay-Aht First Nation, the Uchuckleasaht Tribe, the Ucluelet First Nation, the Toquaht Nation, the Kyuquot & Checklesah Nations	No

Organization / Agreement Amount	Summary of Key Deliverables	Main Recipients of Goods or Services	Did Province Directly Receive Goods or Services?
BC Seafood Alliance \$45,500	<ul style="list-style-type: none"> <li>• Familiarize key players in the BC seafood industry with the issues relating to the impact of offshore oil and gas exploration off the West Coast on fisheries &amp; aquaculture so that they can make informed decisions about both risks and benefits and communicate information to others in the sector. Specifically by:               <ul style="list-style-type: none"> <li>o providing a scoping/research document identifying the issues... that can be used by both the seafood sector and the Team;</li> <li>o holding a one-day workshop and recruiting approximately 75 participants.</li> </ul> </li> </ul>	United Fishermen and Allied Workers' Union, Native Brotherhood of BC, BC Aboriginal Fisheries Commission, Pacific Salmon Harvesters Society and other key players in the BC Seafood industry	The Province is not the main recipient of the services, but did state that part of the intent was to produce an independent research paper that could be used by the Team.
BC Aboriginal Fisheries Commission \$92,115	<ul style="list-style-type: none"> <li>• Plan, manage and deliver an Offshore Oil and Gas workshop to be delivered in Prince Rupert in conjunction with the Tsimshian Tribal Council.</li> <li>• Prepare and produce offshore oil and gas informational print materials appropriate to First Nations audiences.</li> </ul>	First Nations	No



Organization / Agreement Amount	Summary of Key Deliverables	Main Recipients of Goods or Services	Did Province Directly Receive Goods or Services?
Tsimshian Tribal Council \$250,000	<ul style="list-style-type: none"> <li>• Bring information into the Tsimshian Nation communities (five of the seven communities are on the coast and in remote locations accessible only by boat or seaplane) and solicit information from them about the oil and gas issues.</li> <li>• Engage community members and those Tsimshian living in urban areas, to raise their level of knowledge with the current issues, preparing them to confidently participate at general public forums.</li> <li>• Assist the members to ascertain an informed opinion on oil and gas activities.</li> </ul>	Tsimshian Nation	No
Turning Point Initiative Society \$100,000	<ul style="list-style-type: none"> <li>• Review of current Federal and Provincial activities to determine under what conditions Turning Point members would reconsider the existing position that supports maintaining the moratoria.</li> <li>• Environmental scan for Turning Point members.</li> <li>• Preparation of material for 2 newsletters for the community members of Turning Point.</li> <li>• Preparation of action plan for next steps with BC.</li> </ul>	Turning Point members (the Turning Point Initiative Society is an alliance of First Nations on the coast north of Vancouver Island)	No

Organization / Agreement Amount	Summary of Key Deliverables	Main Recipients of Goods or Services	Did Province Directly Receive Goods or Services?
Canadian Centre for Energy Information \$18,000	<ul style="list-style-type: none"> <li>Update the Centre for Energy's publication <i>Canada's East Coast Offshore Oil and Gas Industry</i> and incorporate new information regarding the development and emergence of the offshore oil and gas industry on the West coast of Canada.</li> <li>Provide a new listing on the Centre for Energy's Web portal called Offshore to include a new brochure, industry overview, geography, environment, history, links, careers and glossary of terms.</li> </ul>	Residents of BC and Canada	No