

# Blank Spaces

## The Accountability and Oversight Gap in Saskatchewan's Contract Roadbuilding System

By Taylor Bendig



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**About the Author**

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# Contents

<b>Introduction</b> .....	4
<b>A Note on Sources</b> .....	5
<b>Review of Contracts</b> .....	6
Repurposing of Contracts .....	6
Pricing Breakdowns .....	6
Completion Date and Late Fees .....	8
Performance Deposit .....	9
Open-ended Contracts .....	9
<b>Soaring Spending on Consultants</b> .....	10
<b>Lack of Transparency and Public Accountability</b> .....	13
<b>Inadequate Government Record-keeping</b> .....	14
<b>Contracting-out in Other Provinces</b> .....	16
<b>Conclusion and Recommendations</b> .....	18
<b>Endnotes</b> .....	19

# Introduction

Saskatchewan's highway network is crucial to the livelihoods, safety, and mobility of the province's residents — and operating that network is no small task. With over 26,000 km of provincial highways to maintain and upgrade, Saskatchewan's Ministry of Highways and Infrastructure (MHI) faces tremendous challenges to ensure a smooth ride for travellers.

For the past several years, the provincial government has moved to tackle those challenges through generous levels of spending on highways. Budget allotments for MHI have been exceptionally large, hitting record highs in 2008-09, 2009-10, and again in 2014-15.<sup>1</sup> As MHI points out, these investments will improve driver safety in a time of increasing traffic, and allow for the smooth operation of Saskatchewan's export-reliant economy.

Such enormous funding commitments deserve some scrutiny, however, to ensure that public funds are being spent as efficiently as possible. Saskatchewan relies heavily on private contractors<sup>2</sup> to maintain its existing highways and construct new roads. Since the recent influx of funding for provincial highways is being paid out in large part to these contractors, it is especially important to be certain that their work is cost-effective, carefully managed, and of sound quality.

Several questions motivated the research behind this study. One issue concerns MHI's effectiveness

at administrating its contracts — does the ministry clearly define its expectations when employing contractors? Does it monitor them effectively to ensure performance standards are met, and penalize them effectively when appropriate? Alongside these questions was the matter of cost — what are the rates charged by private contractors? Do they compare favourably to the costs of having MHI staff perform work directly, and represent good value for money for Saskatchewan taxpayers?

This study is by no means a comprehensive review of MHI's policies and performance in the area of contracting. Such a review would require not only tremendous time and effort, but also extensive access to data that the ministry does not make public. Rather, this study will present the results of several smaller efforts to review specific aspects of how MHI handles its contracts, identifying concerns that may be indicative of issues within the ministry's larger system of contracting-out for highway construction and maintenance.



# A Note on Sources

In the course of preparing this study, efforts were made to identify publicly-available sources of information regarding contracting-out by MHI. The ministry's annual reports, as well as its entries in the Public Accounts of Saskatchewan, were of minimal usefulness. The annual reports provide a breakdown of MHI spending by area, but do not distinguish between spending on contractors and spending on staff, equipment, etc. The public accounts do isolate MHI's staff costs from its goods and services budget, and list total payments of over \$50,000 to suppliers of goods and services, but provide no information on what these payments were for or how they were calculated.

A more relevant source of information was MHI's dedicated tenders site for roadbuilders ([www.highways.gov.sk.ca/updated-tender/](http://www.highways.gov.sk.ca/updated-tender/)). This site lists the ministry's roadbuilding contracts from 2006-07 to present, for work such as paving, grading, bridge construction, and culvert repair. Tender details that summarize the project, list all bidders, and provide the winning bid price are

available for each contract. As these contracts are broken down by category, this site allows the public — with some effort — to calculate the year-by-year totals paid to contractors for specific types of jobs.

The lump-sum totals paid to contractors, however, are not of great use when attempting to evaluate the cost-effectiveness or oversight measures of a system of contracting-out. Notably absent from the tenders website, and any other public source the author could locate, was any record of the hourly or per-unit rates charged by contractors. Nor does MHI publicly release data on its contractors' compliance rates in terms of quality or timeliness of work. The actual contracts between MHI and its contractors are also not disclosed, impeding efforts to compile this data using the original sources.

In short, the information necessary to appraise the value and efficiency of MHI's system of contracting-out is not readily available to the public. For that reason, most of the data used in this study was obtained through freedom of information requests. These requests presented the only way to access actual contracts, as well as other relevant information which MHI collects but does not ordinarily release.<sup>3</sup>



# Review of Contracts

Through a freedom of information request,<sup>4</sup> CCPA Saskatchewan obtained roughly 700 contracts between MHI and various contractors.<sup>5</sup> All these were pre-printed, “fill-in-the-blanks” contracts, and the boilerplate in them appears designed to cover road maintenance and construction — it addresses interruptions caused by “unsuitable weather” or “work being done ... on the same section of highway,” for instance. However, the contracts received were not exclusively for highway maintenance and construction. Over half were for the rental and purchase of equipment and material, or for the provision of other services such as building repair, staff training, mowing, and rest area maintenance.

## Repurposing of Contracts

It’s worth noting that this repurposing of contracts renders much of the contract language irrelevant, and means that issues specific to the actual nature of the contract may not be addressed. However, as this study is concerned specifically with the contracting-out of road construction and maintenance, it will focus only on the contracts dealing with those services. 271 of the contracts received were of this type, covering jobs such as patching and surfacing roads, maintaining bridges and embankments, grading and plowing roads, and cleaning or replacing culverts. The total estimated cost of each contract ranged from \$950 to \$323,500, with an average total estimated cost of \$34,994.

## Pricing Breakdowns

The second page of these contracts (Figure 1) is of particular interest from a cost-effectiveness and accountability perspective. The top half of the page is taken up by a chart designed to contain a detailed pricing breakdown, with columns for specific tasks and equipment, the type of unit and estimated quantity, the price per unit, and the total cost for that task or item. This chart was frequently not used as designed. While some contractors provided clear and thorough breakdowns of their fees, many did not. Contractors routinely left the pricing chart blank or filled in only one field; gave only an all-inclusive lump-sum cost rather than a detailed breakdown; or specified a per-unit price but no quantity of units, or vice versa.

Altogether, 41.7% of the reviewed contracts — 113 of 271 — had incomplete or absent pricing breakdowns. This represents a serious weakness in the ministry’s oversight of its contractors. Complete and detailed pricing charts allow the ministry (along with auditors or other reviewers) to judge whether it is being charged a fair rate for services and equipment, and whether contractors’ estimates of the resources required for a project are reasonable. When the ministry signs contracts without requiring a thorough explanation of costs, it increases its likelihood of being overcharged.

Despite so many contracts lacking complete pricing schedules, the line for recording the “Estimated Total Cost of Contract” was almost always filled in. Only four contracts (1.5%) did not list an estimated total cost. The fact that cost estimates were routinely accepted, without detailed pricing breakdowns on which to base them, further suggests that MHI is not carefully scrutinizing the amounts paid to contractors.

Figure 1: Standard Contract, Page 2

Contract No. \_\_\_\_\_

In Consideration of the Contractor fully completing the Work in accordance with this Contract, the Ministry agrees to pay the Contractor for the Work as follows:

Method of Payment: (additional information if required shall be listed in Schedule 1 and attached)

Type of Work / Equipment (including Make, Model, Year and Size) or Material	Estimated Quantity and Unit	Price / Unit	Estimated Total Unit Cost

Other Payment Schedule items (Operator included, aggregate included, asphalt cement included, Ministry supplies asphalt cement, when payment is to be made, etc.):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated Total Cost of Contract: \_\_\_\_\_

**Payment Schedule:**  
 Progressive payments will be made to the Contractor at the end of each calendar month and final payment will be made within 30 days following the Ministry's final acceptance of Work subject to General Provision 13.

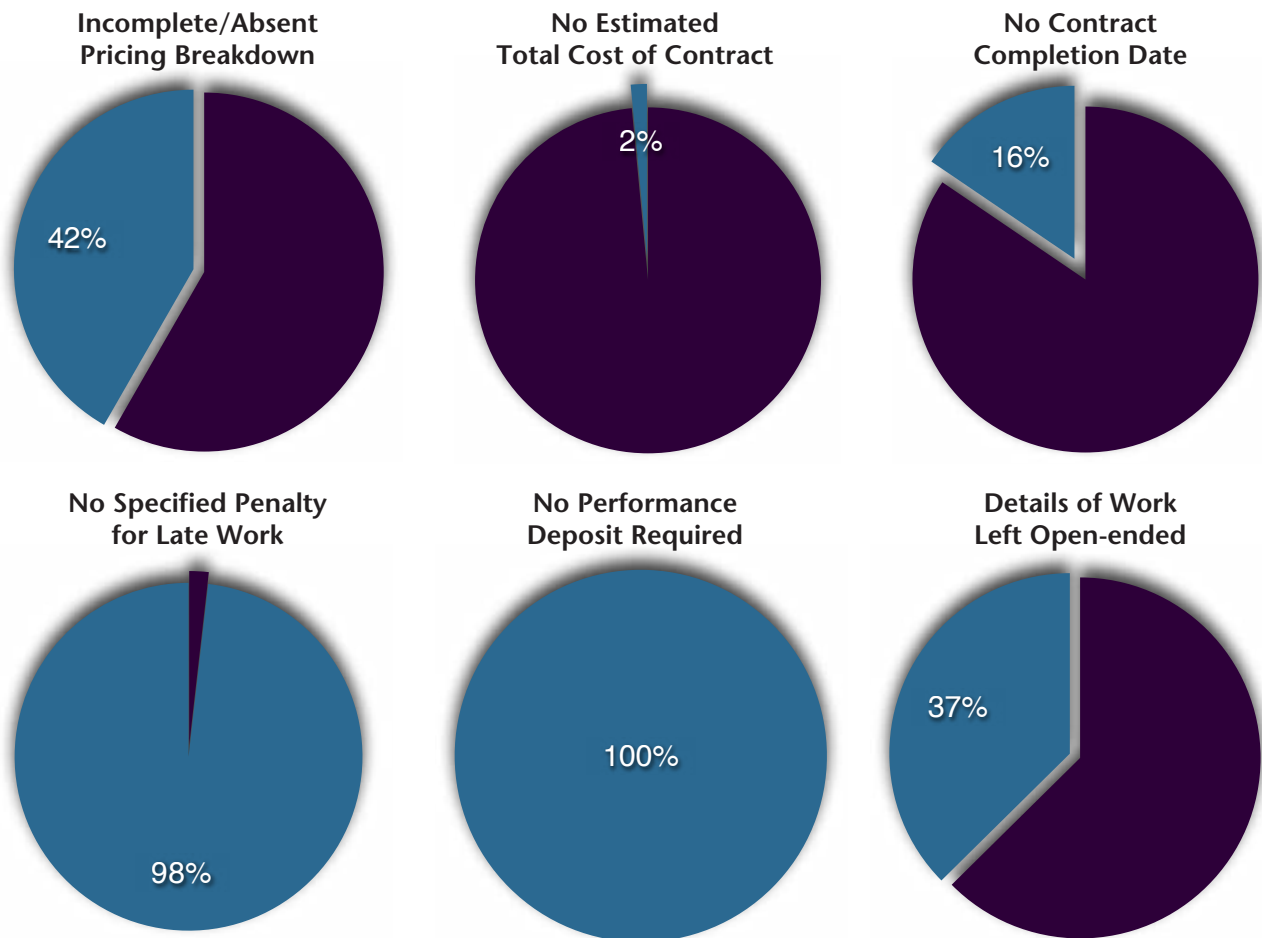
**Contract Completion Date:**  
 Specified Completion Date (dd/mm/yy): \_\_\_\_\_

Penalty per day for uncompleted Work past Specified Completion Date: \_\_\_\_\_  
 (indicate "Not Applicable" if not required)

**Performance Deposit:**  
 A performance deposit in the amount of \_\_\_\_\_ (usually 10% of the Estimated Total Cost of Contract) shall be required to guarantee completion of this Contract (indicate "Not Applicable" if not required). The performance deposit may be in the form of cash, certified cheque, bank draft or performance bond acceptable to the Ministry. The performance deposit held by the Province will be returned to the Contractor after the Work has been accepted and all claims arising out of the Contractor's performance of the Work are satisfied.

Contractor's Workers' Compensation Number: \_\_\_\_\_

Figures 2: Unused Accountability Measures



### Completion Date and Late Fees

Slightly below the pricing chart, the page features a “Contract Completion Date” section. This section features lines on which to record the date by which the project is to be completed, and to specify a per-day financial penalty for contractors who don’t meet that deadline. While a late penalty would seem to be a basic and essential tool for ensuring contractors work in a timely fashion (and compensate the ministry for delays created when they don’t), the option to include one was almost always neglected. Only five of the 271 contracts (1.8%) specified a late penalty; the rest left the field blank, marked it N/A, or listed a value of zero dollars.

In the five contracts that did specify penalties, the late fees were \$100, \$300, \$300, \$500, and \$1000 daily — respectively equaling 0.05%, 0.26%, 0.52%, 0.52%, and 0.41% of the corresponding contract’s total estimated value. Given the extremely limited use of late fees, this report will not attempt to evaluate the appropriateness of these rates.

Many of the contracts went a step beyond omitting late penalties, and did not even specify a completion date for the work. 42 of the 271 contracts (15.5%) had no listed end date, either leaving the space blank or marking it N/A. In several other cases, the end dates were clearly incorrect — specifying that contracts ended before they began, or started and ended the



same day. Other contracts appeared to tie the completion date to the end of the fiscal year, rather than to a reasonable time frame for the work involved or to the road construction season (for instance, one contract to pave a section of highway, and another to replace a culvert, began in June and ended the following March 31).

## Performance Deposit

Directly below the “Contract Completion Date” section, these contracts include a third accountability measure: a space to define a performance deposit. A performance deposit is an amount of money — typically 10% of the contract value, according to the boilerplate text — which the ministry can require the contractor to provide; it is repaid once the project is completed and accepted by the ministry.<sup>6</sup> As with the option to define late fees, this accountability measure was consistently ignored. None of the contracts reviewed required a performance deposit; all left the space blank or marked it N/A.

MHI’s routine failure to make use of these three simple, “fill-in-the-blanks” accountability measures — the completion date, late fees, and performance deposit — raises further concerns about its administration of contracts. When a contractor has no fixed completion date (or an excessively distant completion date), or faces no financial penalty for late work, they lack a major incentive to work as efficiently as possible. In particular, this may tempt contractors to delay public roadbuilding by committing important resources to other projects, as a former assistant deputy highways minister has said sometime occurs.<sup>7</sup> An alternative method for deterring late work, by withholding a performance deposit until project completion, is provided for but evidently is rarely if ever used.

Altogether, MHI’s limited use of the pricing and accountability framework built into its contracts raises one pressing question. If the experts who

designed these contracts felt these measures were valuable enough to include, why does MHI not consider them worth using properly, if at all?

## Open-ended Contracts

A final point of interest emerging from the review of these contracts is that many of them did not assign the contractor a specific, pre-defined task; rather, they were vague and open-ended about the work to be done. Of the 271 roadwork contracts reviewed, 101 (37.3%) arranged for the contractor to perform “various” or “miscellaneous” tasks, or to perform work as required, over the duration of the contract. For example, several contracts used the phrase “work to include all necessary equipment, materials, and labour to do highway, ditch and/or culvert maintenance work” in a specific area. Other contracts were even less descriptive, reading only “Misc. highways work.” Others contracted for the provision of a specific service, such as culvert cleaning or snow removal, but didn’t fix the exact location or frequency of the services.

These open-ended contracts do not lend themselves well to accountability or transparency. It is difficult to determine if a contractor completed their contract faithfully if the nature and/or amount of work to be done is never actually defined in the contract. This is especially problematic given that, even in those contracts that included a complete and thorough pricing breakdown,<sup>8</sup> only estimated rather than absolute total project costs were given. The combination of unclear work terms and a lack of a fixed project cost puts the ministry at risk of being overcharged, as neither the scope of work nor the pricing schedule puts a firm limit on what work the contractor can justifiably bill the ministry for. While the contract boilerplate contains a measure to protect the ministry from paying for excess or unapproved work (General Provision 7, which requires contractors to negotiate in advance changes to the scope of



work and corresponding payment) the value of that safeguard is considerably weakened in the face of contracts with open-ended terms of work.

Vague and excessively broad contract terms may also weaken MHI's prospects if contract disputes reach the legal system. Courts regularly interpret ambiguous contract language in favour of contractors who bill for performing work that was not addressed, or was poorly defined, in the terms of their contract.<sup>9</sup> In short, when the ministry allows contractors to work under contract terms as vague as performing "miscellaneous" or "necessary" work, it weakens its ability to identify, and avoid paying for, work that is unsatisfactory or excessively expensive.

## Soaring Spending on Consultants

Spending on consultants has been rising sharply, across the Saskatchewan government as a whole, over the past several years. MHI, however, stands out for paying consulting costs that have risen far faster than the provincial government's average.

In December 2014, Saskatchewan's Provincial Auditor published a performance audit on the Ministry of Central Services' use of consultants. That report found that spending on consultants by Central Services increased 168% over six years, from \$8.1 million in 2008-09 to \$21.7 million in 2013-14. It also found that over the same period, total spending on consultants by all government ministries combined increased even faster: it rose 228%, from \$36.7 million in 2008-09 to \$120.3 million in 2013-14.<sup>10</sup>

While those numbers are striking, spending on consultants by MHI has increased even more rapidly. By filing freedom of information requests that mirrored the methodology used by the Provincial Auditor's review of central services, CCPA Saskatchewan obtained corresponding numbers for MHI and several other ministries:<sup>11</sup> agriculture, education, environment, and finance. As Figures 3 and 4 show, MHI's spending on consultants has risen extremely fast in comparison to other ministries — it increased 405% between 2008-09 and 2013-14, from \$12.2 million to \$61.3 million. Accordingly, its share of the government's total consulting costs also increased; in 2013-14, MHI spent more on consultants than all other ministries combined.

The great majority of MHI's consulting costs are paid to private transportation engineering firms, which design and oversee road construction and repair projects.<sup>12</sup> While there is nothing inherently wrong with increased use of consulting engineers, especially given the major infrastructure investments of the past several years, there are a number of reasons to be concerned with the specifics of MHI's spending.

First, the ministry's consulting expenses have far outpaced increases in its budget, as Figure 5 shows. MHI's total budget increased 12.3% between 2008-09 and 2013-14, from \$513 million to \$576 million. The ministry's capital budget, from which most consultants' fees are paid, has increased a more impressive 24.2% during that time, from \$226 million to \$280.8 million.<sup>13</sup> In either case, however, spending on consultants is clearly growing at a rate far out of proportion to MHI's funding increases. Total consultant costs have increased at 33 times the rate of total budget growth, and capital budget consultant costs have increased at 19 times the rate of capital budget growth.

A second point of concern is that MHI's consulting expenses have grown continuously year by year — a phenomenon not reflected in other ministries' consulting costs, or in MHI's budget. The other ministries listed above, including central services, showed a mix of increases, decreases, and relative plateaus in their consulting expenditures between 2008-09 and 2013-14, as Figures 3 and 4 show. MHI, however, has seen consistent spending increases of between 20% and 58%, even in years when its total and capital budgets decreased substantially, as shown in Figure 5.

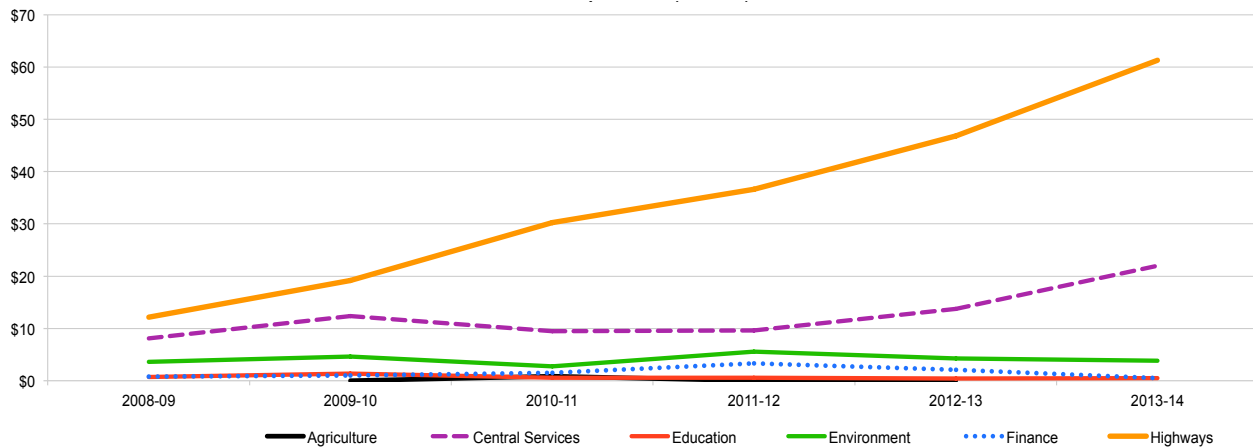
Further cause for concern stems from the recent growth in engineering costs as a share of total roadbuilding project costs. The share of project funds devoted to engineering expenses has

grown substantially over each of the past five years. From an average of 3.2% in 2009-10, engineering costs nearly tripled, to an average of 9.5% in 2013-14.<sup>14</sup> While these numbers go some distance towards explaining the soaring total consulting costs detailed above, they also raise the question of whether inadequate oversight of consultants is allowing engineering costs to increase sharply at the project level.

The rapid and continual growth of MHI's consulting expenditure, in contrast to the patterns of both its own budget and other ministries' spending on consultants, throws into question how diligent the ministry has been in awarding and managing consulting contracts. Given that the Provincial Auditor found significant accountability and oversight issues in how Central Services managed its growing use of consultants, it is reasonable to suspect that MHI — which has increased spending on consultants more than twice as quickly as Central Services — may face similar issues. Certainly the prevalence of incomplete information and unused accountability mechanisms, identified in the contracts reviewed on pages 6-10, suggests a less than exemplary attitude towards contract management within the ministry.

In theory, MHI's tremendous increase in spending on consultants should be accompanied by an equivalent increase in the ministry's ability to manage and monitor consulting contracts. As the provincial government appears committed to the continued use of consultants in roadbuilding and other areas,<sup>15</sup> it would be appropriate for MHI to demonstrate an equal commitment to strengthening its contract oversight resources. Without such an assurance, the public has good reason to suspect that this rise in expenditure is driven, at least partially, by a failure to ensure that consultants are being employed in as cost-effective a manner as possible.

Figure 3: Spending on Consultants 2008-14, by Ministry (millions)



Note: Agriculture is difficult to view on the chart as their expenditures are too low.

Figure 4: Spending on Consultants 2008-14, by Ministry

Ministry	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	% Change
Agriculture	N/A	\$1,075	\$870	\$67	\$68	N/A	0.0%
Central Services	\$8,087,000	\$12,344,000	\$9,462,000	\$9,615,000	\$13,747,000	\$21,969,000	168.3%
Education	\$748,306	\$1,371,505	\$540,308	\$588,554	\$426,741	\$514,088	-34.5%
Environment	\$3,601,280	\$4,629,681	\$2,752,393	\$5,535,256	\$4,249,960	\$3,808,504	5.8%
Finance	\$753,106	\$997,438	\$1,527,207	\$3,303,328	\$2,078,896	\$494,616	-44.0%
Highways	\$12,153,593	\$19,169,121	\$30,286,636	\$36,611,629	\$46,823,350	\$61,339,281	404.7%

Figure 5: MHI Budget Values and Spending on Consultants, 2008-14 (millions)

Year	MHI Capital Budget Allocation (% Change)	Capital Budget Consultant Spending (% Change)	MHI Total Budget Allocation (% Change)	Total Consultant Spending (% Change)
2013-14	\$280.8 (2.00%)	\$50.7 (35.56%)	\$576.0 (-0.95%)	\$61.3 (30.98%)
2012-13	\$275.3 (-3.51%)	\$37.4 (11.98%)	\$581.5 (4.55%)	\$46.8 (27.87%)
2011-12	\$285.3 (13.98%)	\$33.4 (36.33%)	\$556.2 (0.87%)	\$36.6 (20.80%)
2010-11	\$250.3 (-11.34%)	\$24.5 (55.06%)	\$551.4 (-12.46%)	\$30.3 (57.81%)
2009-10	\$282.3 (24.91%)	\$15.8 (73.63%)	\$629.9 (22.79%)	\$19.2 (57.38%)
2008-09	\$226.0 (N/A)	\$9.1 (N/A)	\$513.0 (N/A)	\$12.2 (N/A)

# Lack of Transparency and Public Accountability

Record budgets create record opportunities for waste and financial irresponsibility. Given the extremely large sums that have been invested in Saskatchewan's highways in recent years, this is an especially important time for ensuring those dollars are being spent wisely. However, as the limited scope of this report demonstrates, obtaining the information required to make meaningful conclusions about MHI's use of public money is difficult at best.

Money spent on MHI's own employees and equipment is relatively easy for citizens to account for. The ministry's total payroll, the size of its staff, and the wages earned by all employees earning over \$50,000 are all published yearly in the ministry's annual report and the province's public accounts. The wage rates earned by MHI's unionized employees are contained in the collective agreement published online by their union (although it can take some work to match a given job title to a pay grade). The ministry's current tenders for goods, and the winners and bid values of completed purchases, are accessible online at [sasktenders.ca](http://sasktenders.ca). Perhaps most importantly, the details of routine government expenditures are generally available under freedom of information of legislation.

When MHI contracts out services, however, the public rapidly loses access to relevant financial information. While the provincial government is responsible to the public and required to make public most details of its spending and activities, a private-sector contractor is under no such obligation. And where Saskatchewan's freedom of information laws are designed to ensure public access to government-owned information, they are also designed to prevent public access

to much of the information provided to the government by third parties. Sections 18 and 19 of the Freedom of Information and Protection of Privacy Act, covering "Economic and other interests" and "Third party information" respectively, are very effective at preventing access to the financial details of contracts in particular.

Effectively, the contracting-out of roadbuilding services creates an additional barrier between the public and the information required to judge the effectiveness of those services. Where the costs of paying public staff and purchasing ministry-owned goods and equipment are matters of public record, the costs involved in hiring contractors to perform work on the ministry's behalf are not made public. The terms under which those contractors are hired and managed are also not generally available, as the contracts containing such information are not provided for public review. Critical information is available only through freedom of information requests, subject to potential denials, long delays in response, and/or costs associated with locating and providing the information. In short, the deck is stacked in favour of secrecy over accountability.

Without going into great detail, the research conducted in preparing this report required several freedom of information requests. Obtaining information required intervention by the office of the Saskatchewan Information and Privacy Commissioner, and necessitated the support of a lawyer. The number of months spent waiting for the release of information entered the double digits. It is clear that if the system of contracted-out roadbuilding in Saskatchewan is to be considered publicly accountable, vital information must be more readily available.

MHI's dedicated tenders website provides a useful, if limited, example of how such information can be more efficiently and painlessly made public. If the ministry were to extend this policy of routinely posting information online to include more detailed pricing and cost information, as well as figures on the timeliness and quality of completed projects, accountability to the public would be tremendously enhanced. Such a system of proactive disclosure would do a great deal to break down the barrier of secrecy that has been created between MHI and the public through the widespread use of contracting-out.



## Inadequate Government Record-keeping

There is, of course, one major limit on any system of proactive disclosure: the ministry cannot publish information that it has not collected and organized. The shortage of publicly available information about MHI's contracting-out may represent — at least partially — an inability, rather than an unwillingness, to provide information. This is an issue that deserves considerable concern. While a shortage of publicly-accessible information restricts the public's ability to evaluate MHI's decisions and policies regarding contracting-out, a shortage of government-held information hampers the ministry's ability to make effective decisions and policies in the first place. Nonetheless, recent examples suggest that MHI's ability to properly evaluate

the performance and cost-effectiveness of its contractors is constricted by limited information.

In March 2014, CBC News' investigative team ran a series of stories on late highway construction contracts.<sup>16</sup> During six months of research, the CBC team found that the ministry was unable to answer, or provided initially incorrect answers to, several of their major questions. Initially, MHI told CBC that 13% of highway construction contracts had been late in 2012-13; six weeks later, it supplied an amended figure of 46%. The ministry was unable to provide any answers as to how late the contracts were, and could provide only general theories, such as poor weather and shortages of contractor capacity, as explanations for the high incidence of late contracts. The

ministry was able to calculate what late contractors had been charged in “liquidated damages,” but could not calculate the value of “site occupancy” pay reductions applied to late contractors.<sup>17</sup> Eventually, CBC was asked to file a freedom of information request for the site occupancy numbers, so that the ministry could calculate a cost estimate for gathering that information.

The results of the CBC investigation are worrisome, as much for what was not revealed as for what was. The ministry’s inability to gather and provide relatively basic information about late contracts suggests a serious flaw in its contract monitoring and record-keeping. It is reasonable to assume that the body responsible for managing contractors would collect and efficiently store information on when, why, and to what extent those contractors fail to meet their deadlines, and on what penalties they were assessed. How else could it gauge its effectiveness in assuring timely work, and judge whether a given contractor is reliable enough to be awarded further contracts?

MHI’s inability to answer CBC’s inquiries, however, suggests that the ministry does not store such information in a computer database or other format that would allow quick and focused retrieval. This is further indicated by the ministry’s request that CBC file a freedom of information request to allow the preparation of an estimate of costs. As the first two hours spent searching for records under a freedom of information request are not billed for, MHI evidently expected to spend considerable time producing an answer regarding the site occupancy costs charged. That the ministry would place the financial burden of gathering basic and important information about contractor performance on the public (or on

media outlets acting on the public’s behalf) does not provide much reassurance about its ability or intent to collect that information.

CBC was not the only group to find that MHI could not provide key information on request. In an April 2014 meeting of the Saskatchewan legislature’s standing committee on the economy, the NDP’s highways critic asked whether any cost comparisons had been done between using ministry-employed engineers versus consulting engineers. Deputy highways minister Nithi Govindasamy answered that such an “apples to apples comparison” is “not always easy to do retrospectively in government.”<sup>18</sup> Neither Govindasamy nor highways minister Don McMorris could cite any numbers that evaluated the costs of consulting engineers against public employees. Considering the huge rise in spending on consulting engineers detailed on pages 10-12, it is worrying that MHI cannot quantify what value those consultants offer over the most obvious alternative.

As with any policy decision, MHI’s use of consultants and contractors should be monitored and evaluated according to reliable data. When the ministry cannot produce key information, and when senior officials are compelled to admit that important comparisons haven’t been made, the public has good reason to be doubtful about the soundness of the ministry’s policies. MHI’s apparent difficulties in managing, monitoring, and ensuring the cost-effectiveness of its system of contracting-out suggest the ministry needs to greatly strengthen its data-gathering abilities. As the next section will demonstrate, this is not a problem unique to Saskatchewan — but it is one Saskatchewan might have mitigated if it had learned from other provinces.

# Contracting-out in Other Provinces

Saskatchewan is by no means the only province to make use of contractors for its roadbuilding services. Neither is it the only one to face difficulties in effectively and accountably managing its contractors. Other provinces have embraced the privatization of highway maintenance, in particular, to a greater degree than Saskatchewan has. Their experiences, which have consistently included difficulties similar to those facing Saskatchewan's Ministry of Highways and Infrastructure, reinforce that effective contract oversight and accountability measures are difficult but vital components of a contracted-out roadbuilding system.

As far back as 1994, a review team appointed by the BC government reported problems with the oversight and accountability of that province's recently-privatized system of highway maintenance. The team attempted to assess the economic impact of transferring responsibility for all highways maintenance to private contractors, but had limited success. The review team reported that its efforts had been stymied because "the Ministry of Transportation and Highways had not implemented an accounting or tracking system to enable direct comparisons of the annual cost of the newly privatized program and the Ministry's original program."<sup>19</sup> Turning to the operational impact of privatization, the team identified a series of problems in contract management, including the ministry's inability to ensure that contractors were doing enough preventative maintenance on the highways. Their report concluded that "the standards and administrative infrastructure governing contract highway maintenance require substantial

improvement for the program to be considered stable and sustainable."<sup>20</sup>

Beginning in 1996, Ontario also replaced its in-house highway maintenance system with a fully contracted-out model. Soon after, the province's auditor general reviewed the Ministry of Transportation's handling of the contracted-out maintenance system, and noted serious shortcomings in oversight and accountability. The auditor general reported that the ministry employed too few public inspectors, covering too large an area, to adequately monitor contractors' work. He also found that inspectors did not keep suitably detailed records, and did not assess penalties to contractors even when warranted.<sup>21</sup> Revisiting the issue in 2004, the auditor general found that the ministry still "did not have assurance that its oversight of the work of contractors was effective and efficient." The 2004 report determined that the ministry "did not have adequate procedures to ensure that sanctions for contract violations were administered in a consistent manner," and "could not ... provide comprehensive information about the performance of contractors and ministry inspection staff."<sup>22</sup> Problems persisted, even after that report, leading the ministry to hire an extra 20 public inspectors in 2014.

In 2003, a study by the Parkland Institute attempted to compare Alberta's contracted-out system of highway maintenance to the publicly-delivered system that had existed prior to 1995. The study's author was continually thwarted by a lack of necessary data, and eventually concluded that "it was impossible in the Alberta case to confirm any claims that privatization of



primary highway maintenance has resulted in cost savings to the public.”<sup>23</sup> One of the major difficulties the author encountered was the province’s inability to provide crucial data — she noted that Alberta Transportation “often did not have the information needed or was limited in providing information, by confidentiality issues dealing with private contractors.”<sup>24</sup>

These examples do not translate directly to the Saskatchewan experience, as Saskatchewan uses a mixed public-private highway maintenance model, with both MHI crews and private contractors working under ministry direction. These examples also focus on the provision of highway maintenance by private contractors, rather than the provision of engineering and construction services. The purpose of examining the experiences of other provinces is therefore not to identify specific management practices that Saskatchewan might adopt or avoid — it is simply to make it clear that inadequate oversight and accountability has been a widespread problem facing provincial highways ministries for at least two decades. Independent analysts,

both within and outside of government, have consistently identified the issue as a major problem facing contracted-out highway services.

These shortcomings in accountability and oversight cannot be ignored or dismissed. The experience of other provinces drives home the point that these are not temporary or minor difficulties. They are problems that come with the territory of utilizing a contracted-out roadbuilding system — and they must be addressed if the system is to properly serve the motorists and taxpayers of Saskatchewan. These examples should also motivate MHI to recognize the need to ensure effective oversight of its consultants, who are rapidly claiming a much larger role in the ministry’s activities. Analyses and reviews of the difficulties of effectively managing a large complement of private highways engineers are much less common than those addressing private maintenance contractors. That is all the more reason for MHI to be especially diligent that, as it increasingly embraces the use of consultants, it does not sacrifice its ability to exercise proper and transparent oversight.



# Conclusion and Recommendations

Serious shortcomings related to efficient contract management and public accountability are evident in the contracted-out roadbuilding system operated by Saskatchewan's Ministry of Highways and Infrastructure.

In order to ensure that the province's highways are maintained properly and cost-effectively, the ministry must improve its methods of preparing contracts, and its processes for collecting, storing, and releasing information.

Below are four specific recommendations for MHI, which address the issues outlined in this report:

## **1 Ensure contracts are complete and focused.**

MHI should stress to its employees and contractors the necessity of having contracts completed in full before they are signed and before work begins. Itemized pricing breakdowns with unit quantities and costs should be provided. Reasonable project completion dates — and corresponding late fees — should be fixed, and performance deposits should be collected. Contracts should be designed to establish fixed, measurable goals, rather than long-term, open-ended agreements. If there are cases where it is impractical or undesirable to follow these standards, documentation clearly explaining why the standards were not met should accompany the contract.

## **2 Openly account for the rapidly growing use of highways consultants.**

In light of its over 400% increase in spending on consultants, MHI should release information clearly identifying where that money is being spent, and demonstrating that its oversight abilities have kept pace with its spending. Cost comparisons with the use of ministry-employed engineers should be conducted and published, enabling the public to verify whether MHI's increased reliance on consultants represents good value for money.

## **3 Enhance the ministry's internal data gathering and organization systems.**

MHI should review its processes to ensure that relevant information regarding its contractors — such as the extent and causes of late work, penalties assessed for contract violations, and detailed price information — is routinely collected. This information should be catalogued in a manner that enables the ministry to conduct in-depth analyses of its data, and permits efficient location and retrieval of records.

## **4 Improve transparency and accountability to the public.**

MHI should implement a system of proactive disclosure, potentially by extending its existing tenders website or by expanding the amount of information included in its annual report. More detailed information regarding the cost of employing contractors, as well as details on contractor (under)performance, should be made public as a matter of routine.

# Endnotes

- 1 MHI Annual Reports for 2008-09 and 2009-10; Government of Saskatchewan News Release: "Record Highways Budget Funds Twinning, Passing Lanes, Overpasses and Bypasses," March 18, 2015.
- 2 Although a distinction can be drawn between contractors and consultants, this report will generally use the term 'contractors' to refer to all private parties performing work for MHI on a contract basis.
- 3 Documents obtained via FOI in the course of preparing this report are available upon request to CCPA Saskatchewan.
- 4 This request was filed by the Saskatchewan Government and General Employees' Union, which shared the documents obtained with CCPA Saskatchewan.
- 5 This number excludes some contracts received that were for engineering and other professional consulting services, and for rubber asphalt crack sealing, both of which use different contract formats.
- 6 The contract boilerplate also allows the ministry to withhold a contractor's final payment until the project is completed and accepted. Though this is an accountability measure similar to the performance deposit, the performance deposit allows the ministry to withhold the contractor's own money in cases of underperformance, rather than simply reduce or delay the transfer of ministry funds to the contractor.
- 7 Geoff Leo, "46% of Saskatchewan highway contracts late last year." CBC News, March 5, 2014.
- 8 Oddly, the majority of open-ended contracts contained complete pricing breakdowns, listing the resources required and the extent to which each would be used. This suggests either that the pricing breakdown is highly approximate and subject to change according to how much work is actually performed under the contract, or that the contractors have access to a more complete understanding of the work to be done than is actually recorded in their contracts. Either case presents a headache to anyone who wishes to review a contractor's performance in relation to the terms of their contract.
- 9 See for example *H&H Electric Ltd. v Manor Custom Homes Inc.*, 2014 NSSC 256 (CanLII) at paragraph 27; *Summers v. Harrower*, 2005 CanLII 50261 (ON SC) at paragraph 33; and *Frank & Sons Painting & Decorating Ltd. v. M2 Group Inc.*, 2010 ONSC 3179 at paragraph 35.
- 10 Provincial Auditor of Saskatchewan, 2014 Annual Report – Volume 2, p. 164.
- 11 The Provincial Auditor's report used numbers generated by codes 521100 and 521900 of the provincial government's Multi-Information Database Applications System (MIDAS); CCPA access requests cited these same codes.
- 12 Author's conversation with Reg Cox, MHI's Director of Legislation and Administration, March 5, 2015.
- 13 Compiled from financial overviews in MHI annual reports, 2008-09 to 2013-14. Values represent new budget allocations; carryover amounts are not included.
- 14 Legislative Assembly of Saskatchewan: Hansard Verbatim Report of the Standing Committee on the Economy, April 27, 2015, p. 663.
- 15 Premier Wall was one of several senior members of the government to defend the use of consultants during question period on Dec. 8, 2014, saying that rather than "hire a permanent complement of government staff to take care of these projects ... We're going to use the private sector."
- 16 Geoff Leo, "46% of Saskatchewan highways contracts late last year." CBC News, March 5, 2014; "Lack of information about late highway contracts a 'concern': professor." CBC News, March 6, 2014; "Action promised on highway construction contracts." CBC News, March 6, 2014.
- 17 According to MHI, "liquidated damages" are charges levied on late contractors to compensate the ministry for difficulties that late projects cause to it and to motorists; "site occupancy" is an end-of-project pay adjustment, based on the number of days a project takes. The ministry informed CBC that from 2005-06 to 2012-13, during which time an average of 30% of highways contracts were late, liquidated damages amounted to 0.3% of the total value of awarded contracts.
- 18 Legislative Assembly of Saskatchewan: Hansard Verbatim Report of the Standing Committee on the Economy, April 7, 2014, p. 389-390.
- 19 Peter Burton, Ron Parks, Kelvin McCulloch, and Robert G. Harvey: "The Operational, Human Resource, and Financial Implications of the Privatized Highway Maintenance Program of the Province of British Columbia: A Preliminary Report." BC Ministry of Transportation and Highways, June 1994, p. 8
- 20 *Ibid*, p. 21.
- 21 1999 Annual Report of the Office of the Provincial Auditor of Ontario, p. 251-52.
- 22 2004 Annual Report of the Office of the Provincial Auditor of Ontario, p. 332-333
- 23 Lisa Prescott, "Un-accountable: The Case of Highways Maintenance Privatization in Alberta." The Parkland Institute, October 2003, p.14.
- 24 *Ibid*, p. 20.



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