

CLEAN UP THE PROCUREMENT OF GOVERNMENT CONTRACTS

Proposal:

Review and amend all contracting rules to make the government's procurement process free from political interference.

Current state of affairs:

- Treasury Board establishes contracting policy for the federal government pursuant to Section 7 of the Financial Administration Act. Section 41(1) provides for the Government of Canada Regulations.
- In 2004, the government awarded 421,717 contracts for a value of \$19.1 billion. This included contracts for goods (32.4%), services (62.4%) and construction (8.1%). 84.6% of all contracts were competitive awards; 15.5% were non-competitive. However in terms of value, 92% of the total value were competitive; 8% were non-competitive.
- The objective of government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.
- Compliance to the policy is monitored by internal audits on contracting.

Current Policy Architecture:

- 212 pages with 24 appendices including the Contracts Directive that stipulates delegations of contracting authority, with over 50 approved exceptions to these delegations
- Strong focus on compliance versus results
- The current Contracting Policy does not include explicit references to the prohibition of political interference in contracting, however the PWGSC General Terms and Conditions clauses make it an express condition of the contract that no members of the House of Commons shall be admitted to any share or part of the contract or to any benefit arising therefrom.
- Procurement Reform initiatives begun in 1999 have centred on:
 - Strengthening the government's policy framework;
 - Renewing our human resources in the procurement and materiel community; and;
 - Modernizing our procurement policies and practices.

- Contracting Policy needs to be renewed based on results from procurement reform initiatives. The policy needs to shift from primarily detailed transaction control rules to a strengthened regime of integrated management and accountability that reflects the complete management lifecycle. There needs to be a clear focus on integrated Deputy Minister accountabilities linked to capacity, systems and performance.

Analysis of the Proposal:

- The proposal assumes “political interference” in the context of government procurement. This refers to unethical behaviour that would result in preferential treatment and/or the furthering of private interest in the contracting process. Notwithstanding the contracting irregularities identified by the Gomery Commission, there is no quantifiable evidence indicating that political interference is or is not a systemic issue. In fact, non competitive contracts only account for 8% of all government spending. Regardless, the perception of such interference must be addressed.
- The current Conflict of Interest Codes for Senators, Members of the House of Commons and Public Office Holders include provisions to prevent the use of influence or preferential treatment to further private interests. Justice Gomery did note that exempt staff, may not be aware of the policies, rules and regulations dealing with ministerial-departmental authority. This could result in “political interference” if exempt staff give direction in their own right or in the name of their ministers to public servants in contracting issues. Likewise, public servants may have, over time, assumed political staff to have authorities in this area (i.e. authority to give direction) that do not exist. Judge Gomery recommends that the Government prepare and adopt a Code of Conduct to be circulated among exempt and departmental staff, stating that exempt staff have no authority to give direction to public servants.
- The current Contracting Policy contains a number of values which public servants are expected to uphold including:
 - Prudence and probity
 - Fairness and transparency in the treatment of all bidders
 - Equitable access
 - Best value for money
 - Reasonableness
 - Respect for the law
- Moving forward on the proposal will require drawing a careful distinction between political interference and legitimate ministerial oversight of government policies that impact on procurement and specific transactions that are aimed at the advancement of national objectives (e.g. Procurement Strategy for Aboriginal Business, Industrial and Regional Benefits Policy, Green Procurement Policy).

Options for Achieving the Objective of the Proposal:

Procurement Reform

- The objective of procurement reform is to have a timely, effective and efficient procurement system that is:
 - Founded on values and ethical conduct
 - Guided by a framework of empowered delegation and clear accountability
 - Supported by informed risk identification and management; and
 - Enabled by effective management systems and controls.

- While there have been a number of problems identified with the current procurement process, current efforts have been focused on:
 - Strengthening the policy framework
 - Streamlining and improving the acquisition process
 - Renewing and developing human resources

Options

- Focus efforts in the renewal of the government contracting policy by shifting from detailed transaction control rules to a strengthened principles based regime of integrated management and accountability. Ensure the policies focus on the achievement of value for money and sound stewardship of public funds. Sound stewardship requires the demonstration of due diligence in the management and control of public funds administered through procurement, including compliance with integrity measures. Require that both competitive and non-competitive contracts be conducted in a manner that is fair, transparent and open.

- Publish guidelines or directives to the Contracting Policy that state that Members of the House of Commons, Public Office Holders, Members of the Senate and political staff have no authority to give direction in contracting decisions.

- Continue learning and professional development initiatives on procurement and extend these to Exempt Staff so that they are aware of policies, rules and regulations on contracting.