
Under the Big Top and in the Fishbowl - Does the Public Procurement Process Achieve its Intended Outcomes?

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The demands placed on government managers in conducting public procurement are intensive. In addition to meeting legislative obligations and the fulfillment of operational requirements, contracts let by public entities must stand the test of public scrutiny and achieve a myriad of economic and social objectives. The competitive Request-for-Proposals (RFP) process similarly places increasing burden and risk on industry Bidders. At the end of the day, do government contracts awarded through this rigorous process result in Value for Canadians?

You are a government manager. After months, of research, requirements definition and development, writing, translation, quality assurance, legal consultation and answering questions from potential Bidders, the closing date for your competitive tender – Request for Proposals (RFP) - has arrived. You are at once relieved and excited – the action of purchasing quality goods, services and construction has reached one of its milestones – the evaluation of Proposals received from industry may begin, and you are that much closer to awarding your contract and to the needed work getting underway.

Despite this, when your Contracting Authority arrives with the Proposals received, you are hesitant. In the coming weeks, the decisions you and your selected Evaluation Committee make will at once (hopefully) identify the successful Contractor who will undertake to fulfill your requirements, and, at the same time, by default will eliminate one or more other bidding firms/individuals. Whether you have engaged in the public procurement process before, or are new to its idiosyncrasies, you are doubtless aware of the implications these coming decisions will have.

You are fraught with concern – Did the RFP selection and evaluation criteria accurately and objectively identify the essential (mandatory) requirements of the work to be completed, and in sufficient detail that the responding Bidders will be able to demonstrate their compliance with these

requirements in written form? Will your Committee's outcome be challenged, whether at the Canadian International Trade Tribunal, in court, or in the media, – not, as often thought, for bias or error in the evaluation, but in the public questioning of the clarity of the published criteria or of the veracity of the qualifications of the Contractor to whom the contract is awarded?

And when the requirements of procedure are met, ultimately, will your RFP result in a good procurement outcome? That is, will the evaluation of Proposals based on the RFP issued result in the selection of an experienced Contractor, capable of fulfilling the requirements of the work? Or, will the rigors of the procurement process serve only to reward those who are able to cleverly dissect evaluation criteria, and craft a Proposal, that while technically compliant, is not necessarily indicative of the required capacity or qualifications of the firm that submitted it? Will the required work be done well? And will the government's objectives for this particular project, program, or service, be met in its completion?

In any procurement action, government managers walk a delicate tightrope, attempting to balance multiple and often competing objectives in the expenditure of public funds. In addition to compliance with obligations of the various trade agreements and the enabling legislation of the government department/agency, the process of letting and entering into public contracts must succeed in meeting the stat-



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ed operational requirements in a manner that ensures fairness and transparency through competition while simultaneously fulfilling important socio-economic objectives (Treasury Board Secretariat 2003; s. 2). The latter include aboriginal economic development through the use of the *Procurement Strategy for Aboriginal Business*, encouraging research and innovation in domestic industries, sustainable development through *Green Procurement* and stimulating regional growth (for a discussion see McCrudden 2004). All this is to be achieved under increasingly intensive scrutiny, from a public rightfully intent on the responsible management and expenditure of government funds and from a supplier community vigilant for fair play and due diligence on the part of government purchasers.

One could add to the objectives of the *Contracting Policy* a fifth, albeit unwritten, aim – to reduce or mitigate risk both in the conduct of the procurement process itself and in the delivery of Programs and services to Canadians. It is possible to argue that the catalyst for the increased focus on process and the seeming formality of the competitive RFP exercise lies in the shifting nature of Crown Liability. Where previously, the Crown was indemnified from liability or harm arising from work completed by others, where the goods and services delivered are to be consumed by the public, jurisprudence and legislative decisions have increasingly placed the burden of responsibility for results on the originator of the

contract (the purchaser, being the Crown) (Worthington 2004).

Similarly, determinations made by the public purchaser to award or not to award a contract to a particular Bidder are increasingly subject to question based on the legal and economic implications of these decisions. With these realities, and the need to maintain fairness in competition, it is little wonder that the procurement process demands an objective selection of Contractors based on a written Proposal, rather than reliance on the purchaser's past experiences (whether positive or negative), or the judgment of a single evaluator.

Industry, government, and the Canadian public have all remarked on the expenditure of resources (both financial and human) associated with completing the procurement process each time a work requirement is identified for competitive tender. Are we asking these players (government and Contractor) to jump through too many hoops to achieve, what, at the end should be an honest day's work?

It is interesting to note that an entire industry has arisen, whose sole aim,

arguably, is to assist private enterprise in successfully navigating the rules and regulations of the public procurement process. An internet search of the term 'proposal writing' yields hundreds of pages of tips, tools, training courses, and a slew of independent consultants whose services can be hired for a nominal fee, that will analyze the published government tender, and write a corporate proposal at once designed to maximize competitive advantage, and develop the firm's bidding strategy required to 'win' the Contract. Given that each bidding exercise costs firms an average of \$25,000.00, this strategizing is understandable.

Similarly, the expertise and time required for the government manager to publish an effective RFP – both one that will result in a contracting mechanism that is legal, enforceable and usable, and a process that is designed to attract reputable and qualified firms to submit proposals, and experienced firms to win the contract, is nothing short of a full-time occupation.

All this may lead one to examine the nature of government action in the pure sense of the term, and to question whether

or not this process has constrained both the ability of managers to effectively manage, and industry to operate in a truly competitive fashion. Does the procurement process result in quality work completed by experienced Contractors? Or are contracts awarded only to those who can skillfully navigate the requirements of procedure?

While this paints a bleak picture of the exercise in which government managers find themselves engaged at least once in their career, and for others, much more frequently, it is important, to remember, however, that the demands of the procurement process stem from the timeless and notably worthy principles of fairness and competition, among the other national goals. The question is not so much should government even attempt through the procurement process to achieve all of the objectives in the *Contracting Policy* - as there is more than one way to skin the government policies and priorities cat – important outcomes are achieved not just through the delivery of specific Programs and services, but are also attained and reinforced by the procedures under which government operates – the



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question, however is, does the current procurement process effectively achieve any of its objectives? And, in any one procurement action, is the successful meeting of all four of these objectives even possible?

This being said, studies have demonstrated that the more a company bids on (and better still, the more that it wins) government contract opportunities, the better the position it is in to successfully deliver its particular goods/services in a competitive economy. That is – companies learn (Fu, Drew, and Lo 2002). The very act of going through the government procurement exercise has been shown to create smarter industries - who not only write better proposals resulting in their being awarded more contracts, but who simultaneously increase the quality of the goods and services delivered in the contracts they are awarded. The net result is an increase in the firm's experience and competitiveness within the global economy (or at the very least, in the domestic one). But what does this outcome mean for the public, government, and the managers conducting the exercise?

While it could be argued that this essentially reduces the government procurement process to a form of industry subsidy, that the IMF and World Bank would likely not look too favourably upon, not only do many governments do it (the 'if you can't beat 'em, join 'em' argument), but the fact is, the process appears to achieve results. Out of the over \$7.5 Billion worth of requirements that are competed, resulting in thousands of bids evaluated and contracts awarded federally each year (Parliamentary Secretary's Task Force 2004), the overwhelming majority appear to result in work being completed, if not in excess of expectations, at the very least, to the letter of the contract being tendered. (This underlines the importance of the manager's development of a solid statement of work, aimed at the achievement of results). We may say that we have achieved some form of success. At the same time, industry grows and develops, and quality government Programs and services are delivered to Canadians.

Everyone can point to examples where the seeming unwieldiness of the process has led to both politically unpopular and even abusive outcomes. If nothing else this past year's inquiry emphasizes the importance of conducting a rigorous process. And yet, the problem does not seem to lie with the procurement process itself. The Auditor General has repeatedly observed that the rules are sound, but increased awareness of these rules is essential to undertake procurement that ensures the stewardship of public funds. The exception does not make the rule, and in general, however, the outcome of public procurement appears to be the successful delivery of government Programs and services – operational requirements are met, and achieved in a manner that, through competition, has acted to ensure Best Value, fairness, and all the other good stuff exhorted in the *Contracting Policy*.

So to return to our original premise, does the current procurement process – the planning, the definition and careful documentation of requirements, the development of objective and meaningful criteria designed to 'weed out' the inexperienced and disreputable and reward those capable of fulfilling government requirements – does it achieve the desired outcome set for it – an effective and usable contract, delivering quality goods and services at a reasonable cost? The answer appears to be yes.

The question which follows, and may be informed by recent events - can this process be improved? Undoubtedly. For one, the timelines associated with conducting a successful exercise have long been decried as being at odds with the need to fulfill operational requirements in a timely and responsive fashion. Public Works and Government Services Canada, under the *Way Forward* initiative, is continuing to explore how the public procurement process can be rationalized to increase efficiency, consistency, and overall user-friendliness. The foundation of it all, however, seems to be achieving what was set out for it to do.

So does the fact that an experienced company, known to a project manager as competent and qualified, is at risk of being

eliminated from any one contract competition due to elements being overlooked or inadequately addressed in a technical Proposal, or simply poor writing, compromise what the procurement process can achieve? The answer here is clearly no. As evaluators of these competitive proposals astutely observe, when a company cannot take the time to spell check, review, properly photocopy, or otherwise QA a Proposal they are submitting in the hopes of obtaining \$X Million through work on a government contract, what can the client (government and ultimately, the public) reasonably expect of the quality of the company's goods/services once the contract is in place?

In short, the apparent hoops created by the public procurement process, which industry and government managers must equally jump through, can likely be changed – their number, size, and difficulty – perhaps they should not all be ringed in fire – but in the attainment of important socio-economic objectives, increasing industry competitiveness, and ensuring contractual outcomes resulting in the delivery of quality Programs and services for Canadians, there appears to be some *value* obtained in having these hoops to begin with.

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