

Grants and Contributions

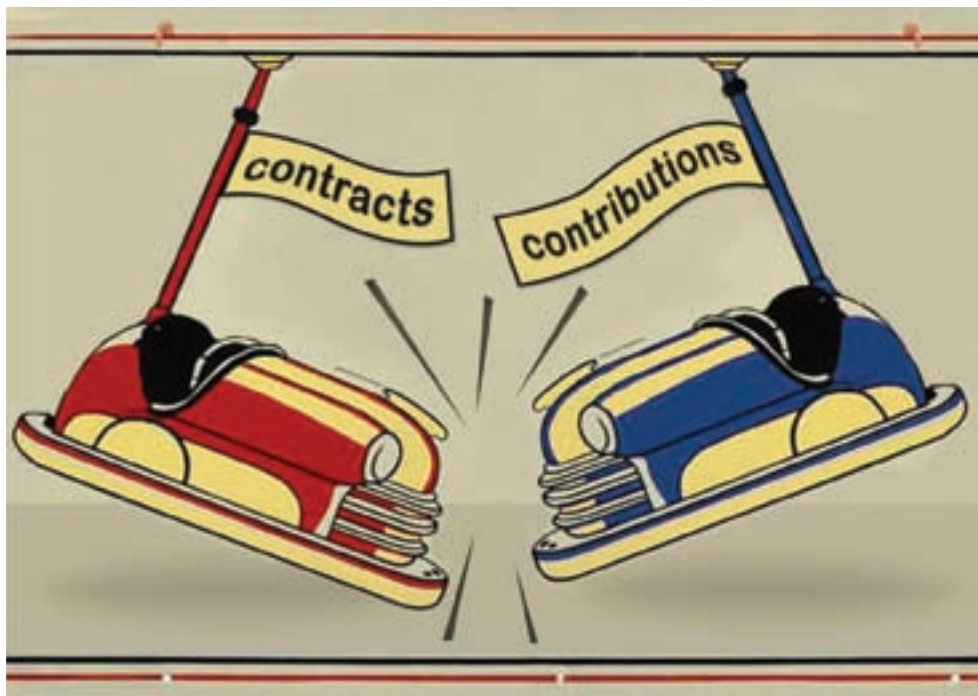
Federal, provincial and municipal governments provide billions of dollars in grants and contributions to many thousands of recipients including individuals, corporations, Aboriginal groups and many others. The funds (\$26 billion from the federal government alone) are used by the recipients to deliver a variety of programs and services to Canadians.

Most grants issued by government agencies are defined as unconditional transfer payments. In other words, there are no (or very few) strings attached to the grant. The grant recipient meets the eligibility requirements, and is expected to use the funds to further a specific cause or socio-economic outcome that the government believes is important. "Take this money," says the government. "Go forward and do good work!"

In contrast, contributions usually have strings attached. Over the life of a contribution agreement, the recipient must demonstrate to government that they are meeting a number of conditions in order to be reimbursed for specific costs. Governments routinely reserve the right to audit how recipients spend their contribution funding.

Across all orders of government in Canada, a well-established (although not always well understood) line has been drawn for officials between when to use a grant or contribution, versus when to establish a contract when fulfilling a requirement.

Historically, contracts have been used when the outcomes of the work are considered to be of direct benefit to the government. Contracts, rather than grants, are used to purchase their office supplies, for example, or to acquire any other good or service that will ultimately be used or consumed by the government itself.



Contributions and contracts

COLLIDE

by David T. Swift



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In contrast, grants or contributions are considered appropriate when some other element within society is the intended beneficiary, but not the government per se. Think of contributions to Aboriginal organizations for employment training, or contributions to non-profit arts and culture groups.

Notwithstanding the occasional mix-up in the use of contributions versus contracts (and the negative audit reports that followed soon after), in the world of government programs a relatively clear line has long existed between these two mechanisms.

That is, until very recently.

In June 2006, inspired by the forthcoming *Federal Accountability*

Act, an independent blue-ribbon panel was established by the government of Canada to look into how grants and contributions could be made more efficient and accountable. The announcement of the new panel came on the heels of the Auditor General's May 2006 report on the Management of Voted Grants and Contributions.

Six months later, in December 2006, the blue-ribbon panel submitted its final report, entitled *From Red Tape to Clear Results*.

The panel made a number of broad recommendations in its report aimed at achieving greater accountability for the funds spent on grants and contributions.

They also made two very specific recommendations on greater transparency and the ability of potential recipients to have better access to information on upcoming grant and contribution opportunities:

- ...improve the current system of recipient access to information about grants and contributions, including web-based notices, email alert systems, key word search capacity, and electronic application and tracking processes; and
- make it easier for (recipients) to access multiple levels of government through a single electronic interface such as MERX (the national online tendering system for government contract opportunities).

Following these recommendations, several government agencies have begun developing and issuing the grant and contribution world's equivalent of a Request-for-Proposal (RFP), the standard competitive bidding document used to solicit bids prior to entering into contracts.

Calling all bids

Prior to this, at the federal level, the normal process of establishing a grant or contribution typically involve neither publicly posting the opportunity, nor a formal competitive bidding and evaluation process to select recipients.

Beginning in 2007, a number of RFP "look-alikes" were developed and made available to groups interested in receiving a grant and/or contribution, via the departmental websites of Service Canada, Natural Resources Canada and others.

New to the practice of calling for bids, many government G&C program managers turned to their colleagues in procurement for help in developing their solicitation documents, and for guidance on how to best apply the principles of competitive

bidding to the awarding of grants and contributions.

"Welcome to our world," said their friends in the procurement division. "We have a lot to talk about, beginning with the basis of selection, standards of disclosure, the duty of fairness, rights of appeal, mandatory and point-rated evaluation criteria, Contract A, Contract B, legal obligations, etc., etc...."

"We had no idea that it would be this complicated," replied the overwhelmed G&C program managers.

It is hard to argue with the notion of improved access to grant and contribution opportunities, as advocated by the blue-ribbon panel. An open, accessible and transparent mechanism for issuing over \$20 billion/year in grants and contributions does a great deal to enhance public confidence in government administration, and the panel was correct to put forward this recommendation.

Open access

The notion of every potential grant and contribution recipient across the country having online access to thousands of opportunities spanning all levels of government is appealing on many levels. Greater awareness would lead to increased competition in the marketplace of ideas and capabilities, spawning untold potential innovations and efficiencies in program and service delivery.

In addition to strengthening government accountability and public confidence, this practice also has the potential to energize the sizeable and essential (yet often underappreciated) not-for-profit sector within Canada.

The blue-ribbon panel specifically advocated the establishment of a single online clearinghouse for grants and contributions, similar to the nationally-based MERX system used to advertise and distribute government contract opportunities.

Since the release of the panel's report, no such national clearinghouse has yet been established, and in its absence many program managers within government have been struggling to fully implement the panel's recommendation.

And the rules are?

For the practice of advertising and competing grant and contribution opportunities to take hold, the program managers responsible for implementing this recommendation have many valid questions in need of answers.

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Grants and Contributions

Such as:

- What are the rules on calling for submissions prior to awarding a grant/contribution?
- Does the legal framework that applies to calling for bids on a contract also apply to grants and contributions?
- Is the solicitation subject to cancellation by government?
- Are standard contractual terms, conditions and terminology to be used, or something else?
- Can potential recipients from outside of Canada respond and be considered eligible?
- Should solicitations be placed on MERX until a national clearinghouse for grants and contributions is established, or would this create confusion among both for-profit contract bidders and predominantly non-profit contribution recipients?
- Do the trade agreements (i.e., NAFTA, WTO, etc.) apply and impose obligations upon government, as they do for procurement contracts?
- Can the government still award a contribution to a recipient if in its submission the potential recipient fails a mandatory criterion?
- Should Legal Services (and/or Procurement) be reviewing the documents prior to their release?
- Can an unsuccessful applicant appeal an award decision to a tribunal or to the court?
- Should financial proposals be sought and scored in the selection process?

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In developing a sound process to implement the recommendation, the balance between transparency for applicants and meeting the government's program objectives can be a very delicate one to strike. The same can also be said (and has been for many years) regarding the role of competitive bidding in the procurement process.

The MERX system (and its predecessor, the Open Bidding System), used today by government agencies across Canada to facilitate open and competitive bidding in support of over \$15 billion/year in contracts, has been in place for so long that today it is almost taken for granted.

It cannot be denied that the introduction of open and competitive bidding, beginning at the federal level in the mid-1980s, had a profound impact on the government contracting process in Canada. While some (including this author) would argue that the accountability pendulum has swung too far to one side during recent years, it is true that open and competitive bidding has brought about numerous improvements in public administration.

A nationally-based, open and competitive process for selecting grant and contribution recipients is a very good idea, and many program managers across government agree. They would just like to have a few of their many questions answered so that they can get on with it. 