

The Federal Accountability Act and procurement:

What Will It Mean?

The Federal Accountability Act, Bill C-2, passed the House of Commons on December 8th following months of review by Parliament and almost 100 amendments.

by David
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The vote brought to a close a long running game of legislative ping-pong over the Bill, which included both a lengthy review by the Senate and no small amount of political posturing on all sides.

Originally introduced by the government on April 11, 2006, the FAA was aimed at strengthening accountability, as well as increasing transparency and oversight in government operations. The omnibus legislation covers a number of areas, including campaign finance, lobbying, appointments, whistleblower protection and auditing.

One of the central objectives of the Act is to improve the integrity, fairness, openness and transparency of the procurement process, with a resulting increase in Canadians' confidence in the process.

Specific measures include:

1. The introduction of integrity provisions within government contracts. Federal contracts will include specific provisions that require action be taken to preclude corruption, collusion and the payment of contingency fees in the procurement process.
2. The establishment of a Procurement Auditor who will:
 - review procurement practices across government to ensure fairness and transparency, and to make recommendations for improvement;
 - review complaints from potential suppliers after contract award;
 - make recommendations to the relevant department should the Procurement Auditor consider the complaint valid;
 - if recommended, require that the government compensate unsuccessful bidders for their costs of bid preparation and loss of profit;
 - review complaints concerning the administration of contracts;
 - manage an alternative dispute resolution program for contracts; and
 - submit an annual report to the Minister of Public Works and Government Services on activities and outcomes, which the minister would then table in Parliament.
3. The engagement of an independent procurement expert to review the new draft policy on managing procurement to determine whether its requirements will reinforce a fair, open and transparent procurement process.
4. The provision of mandatory training and accreditation for federal procurement officers.
5. Provide more resources and greater regional presence to the Office of Small and Medium Enterprises within PWGSC to help these businesses maintain access to government business opportunities and to ensure they are treated fairly.
6. Prevent public opinion research and advertising contracts from being used for partisan or personal benefit, and appoint an Independent Advisor to conduct a full review of public opinion research practices discussed in Chapter 5 of the Auditor General's November 2003 report.
7. The introduction of a Code of Conduct for Procurement to consolidate existing conflict-of-interest and anti-corruption policies. It will apply to both suppliers and public-service employees.



In December, Pierre Poilievre, the Parliamentary Secretary to the President of the Treasury Board, delivered a presentation on the Act to government procurement officials at the Materiel Management Institute/RFP Solutions "morning briefing" in Ottawa. He outlined the various procurement provisions, why the Government of Canada felt such measures were needed, and how the government intends to implement them.

While stressing that the government did not believe the procurement violations cited by Justice Gomery were the fault of public servants, Poilievre reassured that the measures in the Act were needed to "clean-up" government contracting, and to provide procurement practitioners with the support and tools they need to prevent such violations from reoccurring.

He also pointed out that, in many respects, implementation of the Act has already begun.

On the subject of training and accreditation for federal procurement officers, the Treasury Board Secretariat's new Professional Development and Certification Program is already well underway, with several mandatory fundamentals courses now being delivered.

In July 2006, Treasury Board President John Baird appointed Robert Dye of the Purchasing Management Association of Canada to undertake a review of federal procurement policy. At that time, Baird said: "Instead of more rules, we want to put the right rules in place. We want to strike the right balance between oversight and flexibility." Dye's review should be completed soon, and the new procurement policy suite is expected in the coming months.

Many expect the review will identify areas where existing procurement policies can be streamlined, and where the government could replace transaction-level requirements and rules with basic

principles of management accountability and transparency.

In addition, it is likely that certain procurement policies and regulations will be repealed where they are found to inhibit the effectiveness of public-service employees, rather than promote accountability and good management.

Now that the legislative status of the Act is finally resolved, it is anticipated that further developments will soon occur and that additional questions concerning the Act's implementation will emerge.


For instance, on the surface there would seem to be some overlap between the mandate of the proposed Procurement Auditor, and the existing mandate of the Auditor General, who just recently published an audit having to do with federal procurement. If and when the Procurement Auditor is established, will his/her mandate need to be clarified vis-à-vis the mandate of the Auditor General?

In addition, when will a further judicial inquiry be called (if at all) to look into the findings of the Independent Advisor exam-

ining public opinion research practices, an area not included within Justice Gomery's review of Sponsorship and Advertising, and an option specifically mentioned within the Action Plan?

And finally, what if anything will the Act do to address the concerns of small and medium sized businesses, many of whom have condemned recent changes to federal procurement practices (such as PWGSC's "Way Forward" initiative) as being unfair, ineffective and a barrier to doing business with the government?

Do we know what the implementation of the Act will mean for procurement, and what effect it will have?

Those who have worked in the area for some time have seen numerous "procurement reform" initiatives come and go over the years. Not surprisingly, some have no doubt adopted an "I'll believe it when I see it" attitude. However, others, particularly those who have witnessed procurement abuses first hand, are hopeful that the measures will help put a stop to such practices. 

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