

COMMON CENTS

Sole-source contracts undermine procurement system

by Gord McIntosh

The federal procurement system has become a lot like the Canadian Senate. Complaints about how both entities are run continue to pile up, the public is losing respect and official Ottawa continues to turn a blind eye.

In the latest indication that something is very wrong, Auditor General (AG) Denis Desautels documents a disturbing picture on sole-source or untendered contracts.

Under federal rules, contracts must be tendered with four exceptions: the contract is needed in a genuine emergency; the value is small (under \$25,000); only one supplier can do the work or supply the product; or, simply, that tendering is not in the interest of national security.

In the AG's latest report to Parliament, Desautels' staff examined in detail 50 of the more than 500 service contracts for which Public Works and Government Services Canada (PWGSC) had advertised an advance contract award notice (ACAN) on MERX, the electronic tendering site used by the government.

The AG found 89 per cent should have been put out to tender under the government's own rules. Of the sample, only 11 percent were compliant whereas last year's annual audit by Desautel found that about a third of the sole-source contracts were justified.

The AG also notes many public service managers interviewed by his staff expressed the view that the act of publishing an ACAN reduces the onus on them to fully establish the uniqueness of the supplier who has been chosen. As this view worked its way into the bureaucracy, public servants began to view the ACAN as a sort of fifth exception to the tendering rules, the AG concluded.

In 1989, to satisfy a complaint by a supplier at the former federal Procurement Review Board, ACANs were introduced into the procurement system. Their purpose was to add an extra measure of transparency. In theory, by making managers advertise in advance their intention to award a contract without tender, a potential supplier could step forward to demonstrate their expertise. That was supposed to be how it would work.

There doesn't seem to be any figures anywhere on how many suppliers have been successful in challenging a manager's decision to sole-source. But there is plenty of evidence to suggest the bureaucracy has been able to take what appears to be a sound idea and corrupt it for its own purposes.

ACANs have gone from minimal use in the early 1990s to being about a fifth of all sole-source contracts worth more than \$25,000.

This is a classic example of how a proposed solution has become part of the problem.

What to do about it? It's not that the misuse of ACANs and the whole sole-source system has not been documented. The government operations committee of the House of Commons, under the chairmanship of Paul Zed, published a report just before the last election that should have set off alarm bells. The public accounts committee has been diligently hammering away at this issue for a few years.

MPs of all parties are beginning to ask questions in the Commons. But neither the government, nor its bureaucracy, will feel compelled to clean things up until suppliers themselves convince the public that it is in everyone's interest to do so. All suppliers should have an equal, transparent chance to bid for federal contracts.

The task is not impossible. After all, who would have thought just three years ago that politicians of all stripes would be clamouring to convince the public who will cut taxes the most?

Ironically, perhaps the Senate could be of some assistance here. Recently the Senate caught some flaws in the privacy bill and rewrote it. It also stopped the government from doing something very heavy handed – taking away citizens' right to sue – in the Pearson airport affair. Perhaps the upper chamber could take on the ACAN issue.

In 1997, federal contracts above \$25,000 totalled \$3.9 billion. Of that \$1.34 billion were for sole-source contracts. Does any federal supplier have a question about what needs to be done?

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