

IN MY OPINION

Go to jail, go directly to jail, do not award that sole-source contract

by Michael Asner

It would appear that our federal government believes that 40 percent of Canadian firms are unique and, therefore, qualify for sole sourcing. At least that is the impression I get from the last few reports of the Auditor General of Canada (AG).

We all know that competition promotes efficiencies and lowers prices and gives suppliers a fair shot at government business. The competitive process is considered so important that it is embodied in public policy at all levels of government and enshrined within the trade agreements.

Enter sole-source contracting. In theory, this non-competitive procurement method is never supposed to be used unless there is one, and only one, supplier for a particular good or service, and only after a detailed written justification has been approved. In reality, it has been used to bypass competitive processes, to reduce the work associated with procurement, to speed up projects and to reward friends, and it occurs at all levels of government in Canada.

The abuses vary:

- Timing games: Deliberately leave a procurement to the “last minute” in order to ensure that only one supplier can respond or so it can be re-defined as an “emergency procurement.”
- Define away the competition: Narrowly define the requirements to fit only one contractor.
- Variations after the fact: Take a legitimate sole-source contract and extend its dollar value without putting it out for tender.

While many purchasing officials and senior managers comply with the law and the intent of their organizations’ policies, others do not, seeing procurement rules, policies and authorizations as bothersome. In fact, the AG has said that many federal departments simply ignore the rules and that “current practices are not fair and not open.” Compounding this problem, many organizations do a poor job of monitoring their own procurement efforts. The AG’s last report characterized the lackadaisical attitude of some public contracting agents as the “sole-sourcing syndrome.”

“The combined results of this year’s and last year’s audits lead to a conclusion that contract management problems – inadequate needs assessment, poor definition of requirements, weak cost control and poor control over deliverables – represent a syndrome arising from the lack of challenge and discipline inherent in the sole-sourcing process. Based on our work this year and

last, it is clear that the problems we have observed are government-wide in nature. While we recognize the Treasury Board Secretariat's limitations in dealing with matters of departmental management, we believe that as the entity responsible for contracting policy its strategic leadership is needed in responding, with departments and agencies, to the problems associated with sole sourcing and ACANs [Advance Contract Award Notices].”

These findings could apply to every level of government across Canada. To solve this systemic problem we have to adopt sensible practices – “best practices” already known to most procurement people. The components of an acceptable sole-sourcing strategy include: ensuring that there is only one supplier; writing the justification and having it approved; publicizing the award in advance; publicizing the process in your tender documents; and providing a detailed Annual Report.

Sole sourcing does have a place when accompanied by full and total disclosure. We have to ensure and validate compliance. Reviewing the [AG reports](#), I noted that, though reported on year-after-year, not much is done to ensure better management of government contracting, while continued abuse of sole-source contracting undermines public confidence in government and the democratic processes.

Clearly, most levels of government lack the will to restrict sole sourcing to its proper and legitimate use. Clearly, these governments need some help to embrace best practices. In the US and other jurisdictions, help has been provided by lobby groups – stakeholders in the procurement process.

Canadian stakeholders such as the Canadian Bar Association, the Purchasing Management Association of Canada, the Canadian Public Procurement Council and any supplier groups who advocate procurement reform should focus on sole sourcing and lobby for:

- the elimination or restriction of sole sourcing (in some jurisdictions, such as the State of Massachusetts, it has been all but completely prohibited);
- the implementation of a unified process for monitoring sole-source procurements in all jurisdictions across Canada;
- an annual report on sole-sourcing awards by jurisdiction across Canada to support comparisons and contrasts between provinces and territories;
- putting some teeth into prosecuting those who fail to comply with procedures; and
- the development of a single powerful agency, similar to the CITT, to handle all challenges for federal sole-sourcing awards.

In my opinion, governments at all levels need some help with this issue. Each of these measures would benefit all of the stakeholders and help restore confidence in the workings of our federal, provincial, territorial and local governments.

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