

# The tender trap

## MERX contract takes heat from suppliers and competitors

by Richard Bray

MERX is back – maybe – and not everyone is happy about it.

Some of the critics of the federal government's recent two-year extension of its contract with the Bank of Montreal to supply electronic tendering services are predictable – they're competitors in the same business as MERX.

But the extension was accompanied by a 600 percent increase in the MERX monthly

subscription fee, to \$29.95 from \$4.95, and the people who pay those fees – including thousands of small and medium-sized businesses – are equally unhappy.

The massive fee increase outrages Garth Whyte, executive vice-president of National Affairs at the Canadian Federation of Independent Business (CFIB). Concerned about the impact on its 100,000 members, the CFIB asked for, and was quickly given, a private

meeting with the new Minister of Public Works and Government Services (PWGSC), Don Boudria.

Following his late April meeting with Boudria, Whyte says, “We told him that we really wanted to work with him and that we had worked with the department in the past on getting business to sell their goods and services to government, but this whole MERX thing has got in the way and until that’s cleared up, we can’t deal with the bigger agenda.”

The CFIB takes the position that procurement is critical for local economic development. “We also said, several years ago, that procurement is necessary to get business into the e-commerce world. So you’re hurting economic growth. It is actually a disincentive to having new businesses get into the e-commerce world,” Whyte says. “We showed them that 75 percent of our members are on the Net and one out of two sell to government, but many still aren’t using MERX, and this will dissuade them from using it in the future.”

## ... procurement is critical for local economic development

Whyte calls the MERX affair a case study for how the federal government’s fee and cost recovery program is failing. “The knock on government fees generally is lack of consultation, and there definitely wasn’t any consultation on this with any of the stakeholders,” Whyte says. “Lack of a fair tendering process, exorbitant increases in fees, no analysis of the economic impacts, and no appeal process. We have to go to the Minister.”

Whyte says the Minister should put pressure on the Bank of Montreal for a return to the original MERX pricing, at least for “entry-level” businesses. In the meantime, he says, “This has to be looked at as a transition period, not as a final deal. They worried about transition for themselves and for the bank but not for the users.”

Some bid distributors cannot understand why the Bank of Montreal needs such a massive increase in its monthly subscription fees. Barry O’Rourke, president of Compsult, the parent company of PODS, a bid distribution firm based in St. John’s Newfoundland, was surprised to learn that MERX claimed to have been running in the red for the last five years. “Operating at a loss? I can’t understand that,” he says. “If they are operating at a loss, then they’re not operating the business properly because of the fees that they were getting for the documents themselves, not to mention that if you wanted to do work for the government of Canada, you had to be a member.”

Marnie Kinsley, executive vice-president for e-business at the Bank of Montreal, says that when the pricing structure was established at its inception in 1997, MERX was a new type of product. “We weren’t sure about usage projections,” she says. “We overestimated those and we underestimated the cost of actually putting the service together but we had a five-year contract with no price increas-

es allowed with the federal government and so MERX has not been profitable for us.”

In a statement, PWGSC says, “MERX’s new rate structure compares favourably with the prices of similar online services offered in such jurisdictions as the US. In fact, the government carried out a comprehensive cost review of the MERX system. That review determined that the new rate structure for the period of the extension is fair and reasonable to ensure continued delivery of the necessary GETS (Government Electronic Tendering Service) services that MERX delivers.”

Speaking several weeks after the first notice of the increased fees, Kinsley says, “We have had a very small number of customers close their accounts, but the vast majority are very much still with us, logging in every day



*Garth Whyte, Executive VP of the CFIB, says small business wants to work with government but “the MERX thing has got in the way.”*

and most have understood that the increase in pricing is necessary to ensure the continued delivery of MERX.”

Although the PWGSC statement says, “... we are not yet in a position to speculate on what the eventual system will be or who will be the service provider,” it is clear that the department did not feel there were any serious interim alternatives to the current Bank of Montreal service. In his meeting with the CFIB delegation, Boudria said no other organization than MERX was able to deliver a complete solution.

In the meeting, the CFIB delegation made it clear that its members are also concerned about the appearance of fairness in government contracting. Whyte says, “This Minister, we trust him. We think he is concerned about fairness, and that is why he has been put in that position but this contract is unfair. Even if there was no one else that could bid on it, it should have gone out to tender. It shouldn’t have just been quickly and quietly signed.”

PWGSC itself says the two-year extension would have allowed the time necessary to develop and implement a successor system. That process is now underway following a Canadian International Trade Tribunal’s (CITT) announcement that it will conduct an inquiry into a complaint from Tendering Publications Limited of Fredericton, New Brunswick.

The CITT ruling effectively prevents the new contract from going into effect, putting the two-year extension of MERX’s lock on federal tendering information on indefinite hold.

Tendering Publications Limited, which operates BIDS, an online tendering informa-

tion system, complained that PWGSC, “by not using open tendering procedures for the subject procurement, failed to allow the complainant to compete for the requirement, contrary to the provisions of the applicable trade agreements.”

Hart North, the owner and president of BIDS, says the PWGSC decision goes directly against the government’s own principles of procurement. “It is a violation of the three tenets: open, fair and impartial,” he says.

## ... users want to see competition in the tender distribution market

“They seem to be concerned about the legal aspects of liability if they were to extend the distribution arrangement [to private sector distributors],” North says. “I think people would be quite willing to enter into an agreement to take the data and not alter data. That’s the way we do it.”

O’Rourke, speaking on behalf of PODS, says, “I was surprised, very surprised, and I felt that given the circumstances with how the federal government is extending their current situation, they could have done it with the current pricing structure or could have gone through a process where other companies could have competed for that kind of rate infrastructure.”

Jay Yoon, president of bid distributor Electronic Tendering Network (ETN), headquartered in Toronto, strongly favours a free feed of procurement data from governments at every level to companies like his.

“That is what we have been asking the federal government and the provinces for. Let the market dictate where they want to go, instead of exclusivity,” he says. “Why talk about Microsoft’s monopoly? MERX has a monopoly. Besides that, the provinces and federal government made it look like MERX was the only acceptable electronic tendering forum. The province of Quebec mandates its entire

MASH (municipal, academic and hospital) sector to use MERX. I could have made millions of dollars if I had that kind of contract.”

News of the MERX renewal caught the private sector bid distributors by surprise, because they had been led to believe that the federal government was seriously looking at an open system.

“Every indication, but nothing in writing or any kind of formality,” O’Rourke says, “[pointed to] the federal government some-

how opening this business application up to other service providers in Canada, in an open and competitive type arrangement. I was totally surprised by that announcement. It came out of the blue. I have been in contact with those guys as recently as the January timeframe and I was still getting the feeling, the understanding, that was how they were proceeding.”

The Internal Trade Secretariat (ITS) is the body responsible for overseeing the Agreement on Internal Trade, aimed at reducing trade barriers within Canada. Among its goals for procurement is equal access for all interested Canadian suppliers. During regional consultations, witnesses’ testimony made it clear that users wanted to see competition in the tender distribution market.

While *Summit* did not have the results of a 2001 PWGSC survey of MERX stakeholders, because they can only be obtained through the lengthy Access to Information process, a senior PWGSC official confirmed in a recent interview that respondents wanted a more free and open distribution of bid information.

Yoon of ETN says his company had been negotiating with the government of Ontario since October and was told the province was waiting for federal leadership. “I was kind of stunned, the way the federal government

managed the whole contract issue there. Obviously there was something behind it that I don’t know about,” Yoon says. “I don’t want to start to speculate but at this point when, without even warning anybody, they sign a contract with the Bank of Montreal. I think this is pretty bad decision-making by PWGSC.”

Even while the parties involved waited for the CITT hearing on the MERX contract, sources in government and private industry were speculating that PWGSC would be issuing a Request For Proposal (RFP) for the successor system to MERX as early as June. One executive in the information technology industry said it was his understanding that it had taken federal bureaucrats much too long to understand that any MERX replacement would be a massive undertaking, requiring at least a year and possibly 18 months to write the necessary computer code. As a result, the federal administrative machinery was unable to offset the public relations damage of the MERX renewal with the accompanying announcement of a major RFP.

To generate the full benefits of a federal, end-to-end electronic procurement system, “the new MERX” will probably need to connect smoothly with more than half a dozen major financial systems at more than 100 departments and agencies, run on different hardware platforms, reach into the wireless world and meet the greatly increased security requirements that would support such enhancements as online bidding and interactive auctions. Instead of a simple one-way street for bid documents, it has the potential to become the superhighway of a complete e-procurement system.

In the meantime, everyone involved is waiting for the CITT to decide whether the MERX contract, a multi-million dollar service designed to ensure fair government procurement, should not be subject to the same tendering process it exists to support. That decision could be rendered by the middle of July. *MM*

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