



Breaking procurement rules is a crime

by Michael Asner

About a month after my last column, *Wanted, more scandals* (Summit, May 2002), was written, the Auditor General (AG) identified a really juicy scandal. She called in the RCMP to investigate Public Works and Government Services Canada (PWGSC) contracts with advertising agency, GroupeAction. Reviewing the transactions, the AG found, "...None of the documents we examined contained any explanation of how the government had determined the need for the services or why it had decided that contracting was the best way to fill the need ... We found no evidence that a proper selection process was followed in awarding the first contract."

One can only wonder how these sorts of situations continue to occur in other governments and agencies throughout North America.

It's certainly not for the lack of knowledge or expertise related to procurement and public policy. Most organizations have at least one senior procurement person who knows about fair and open competition and has access to sample policies, guidelines, Requests for Proposal (RFPs) and handbooks – many available via the Web – for example, RFP advisor at www.rfpadvisor.com, or National Association of State Procurement Officials at www.naspo.org, or the Province of Nova Scotia at www.gov.ns.ca/finance/tour.

It is not a lack of policies or procedures. Much time and money has been invested developing a comprehensive set of procurement guidelines, policies based on applicable laws and court rulings.

It's not a lack of qualified professionals. Many jurisdictions insist that senior procurement officials have significant experience and training. There are several active Canadian professional organizations.

So why then are procurement scandals a common occurrence? I think the first, and most significant reason, is that politicians and senior executives are not held accountable for their actions. There are no direct, immediate and severe consequences of inappropriate procurement deeds. The second is that the culture of the organizations, from the top down, does not encourage proper procurement – often, because politicians are ignorant about public policy and procurement, or simply don't care.

State of Alaska Procurement Code

TITLE 36. PUBLIC CONTRACTS

Chapter 36.30.

Sec. 36.30.930. Civil and criminal penalties

The following penalties apply to violations of this chapter:

(1) a person who contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under this chapter is liable for all costs and damages to the state arising out of the violation;

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

In terms of the need for immediate and severe consequences, lawyers tell me that, in Canada, the rules for competitive procurement have been established by the Supreme Court, not by statute. So, when a public agency ignores the rules, nothing happens immediately. Often things only happen when a supplier spends thousands of dollars, and possibly years, to take the agency to court. So agencies know that few suppliers will challenge them, and when challenged, they can make the process expensive, frustrating, and a poor investment for the supplier.

In terms of the culture of an organization and politicians' attitudes towards procurement, many politicians are simply ignorant about public policy related to procurement. They think that procurement means just buying stuff. When politicians are challenged about failing to adhere to policies, they often denigrate the worth of a policy saying something like "well, its not a law, so I have the discretion to modify or ignore that particular policy in this case..." and I judged that it was not in my constituents' best interest." But, when spending public money, their actions should be constrained by public policy and the courts, both of which require fair and open competition.

I believe politicians at all levels of government need some guidance about public policy related to procurement. About 10 years ago, an association in the US published *An Elected Official's Guide to Procurement*. We could use a comparable publication here – and hand it out to every elected official as part of the job orientation. A basic tutorial on public policy and procurement would answer simple questions such as: What is procurement? Why is it important? What are the objectives? What is the legal framework? What are the ethical considerations? What are the requirements for competition?

The integrity of a government's procurement system is a key element in the practical application of public policy. When the rules get broken the solution should be simple: make the consequences severe and immediate. In Alaska (see sidebar) an improper procurement can be a class C felony – devastating to any politician or director of an agency who chooses to ignore public policy and the law.

I've identified two strategies for reducing the scandals in procurement – one based on new laws, the other on education. On an optimistic day, I think all we need do is educate our politicians and change their collective attitude toward procurement; on a pessimistic day, I think that we need laws prescribing acceptable procurement practices with specific penalties for each transgression. I believe laws are more powerful and more respected than policy. No one wants to be a procurement felon.

In my opinion, while public attention is focused on public procurement, we should do both – now. Let's enshrine fair and open competition in a statute and let's educate not only procurement professionals, but also our politicians and senior administrators. *MA*

Michael Asner (asner@compuserve.com), based in Vancouver, authors The RFP Report, published in Canada and the US; he provides training to PMAC and NIGP members; and he has authored several books on procurement, including The Request for Proposal Handbook and Selling To Government. See www.proposalsthatwin.com and www.proposalworks.com.