



You are the custodians of public procurement

by Michael Asner

We all know that government procurement is supposed to be done in a “fair and open” manner. These are the words found in the published policies of our federal government, the provinces, and other public sector bodies from coast to coast. Nice words, but a difficult concept for some politicians and some senior administrators to grasp.

Look at some recent events. In the last few years, the abuses of this “fair and open” procurement policy have been vigorously reported in the media. Seemingly, many politicians and senior bureaucrats have been caught abusing this policy. Their denials are, at best, a creative exercise. At worst, simply hollow words. Some deny knowing the policy. Others claim that it wasn’t really a policy, more of a guideline or a suggestion, and therefore within their discretion. And some admit that “fair and open” is a significant public policy but just didn’t apply in this case!

With all this activity, I’ve wondered who actually makes this policy “work.”

In every procurement there are a lot of stakeholders – politicians, management, procurement people, the vendor community and the public.

Few of our politicians have devoted themselves to the principle of “fair and open” procurement. Many are concerned with narrower political interests – from rewarding friends to keeping the work within their constituencies. Only recently, has ethics and procurement policy been of interest to most politicians.

And, in terms of federal procurement, the Auditor General (AG) only reports after the fact. The AG doesn’t actually write policy, procedures or job descriptions for procurement people, nor does the AG review prospective procurements.

Our courts have written the rules for “fair and open” competition, identifying major principles. The courts may have defined the rules, but only the public bodies themselves can implement the required changes. It is only governments that can, in the first instance, ensure that they operate in a fair and ethical manner. And, bringing a government or public agency to court requires that some person or company initiate an action, which is neither cheap nor easy.

Many of the stakeholders do not have a day-to-day interest in “fair and open” competition. The day-to-day operation of the procurement function, and the implementation of the courts’ rulings, depends on the effectiveness and integrity of the procurement professionals who actually prepare and publish the Requests for Proposals, evaluate the responses and award the contracts.

In many cases, these people are doing it alone. They know the rules, the ethics of procurement and the laws and court rulings, and they want to do it right! In my workshops, I hear stories from procurement people about their difficulty in keeping the process fair and open. I’ve

heard about pressure from their bosses to suspend the process because of political pressure or deadlines. Things like, “I know it’s not quite to your standards, but just sign the contract; we don’t have time to re-do the RFP.” I’ve heard stories about procurement managers, confronted with information technology management, saying, “You’re holding up my project. I know who I want to do the job. Just get them in here, never mind this process.”

In some organizations, the procurement manager is the only person defending the process defined by our courts. Many have been put in the position of objecting to specific actions of their colleagues and bosses. But how many times can you object, and how many times can you put your job on the line?

On a daily basis, it is the procurement manager who is the custodian of this important public policy. It is not the courts, which are often inaccessible; not the Auditor General, who identifies the transgressions; not the management committee, who doesn’t always understand, but the procurement manager. And procurement managers are never the most important manager in the organization. They are often middle-level managers reporting to the finance department.

Some jurisdictions have attempted to empower the procurement manager. In some jurisdictions, the job description actually indicates that the work is to be done consistent with public policy. But this is rare. However, when public policy is part of your job description, it’s hard to be fired for making an issue about public policy.

And there are other ways to make the procurement manager more effective. Make protests part of the process. Have an independent oversight body such as the Canadian International Trade Tribunal with cheaper, faster access than courts. Establish a statutory basis for “fair and open” so that transgressions are criminal events rather than civil. Train senior management in procurement principles and law. Keep the pressure on our politicians so that they become advocates for procurement reform. Use the RCMP sooner and more often.

I believe that more public bodies should acknowledge the pivotal role of procurement in implementing this policy, as well as being the custodian of this policy. However, this is not enough.

In my opinion, procurement needs a strong, effective advocate – an organization with both clout and money to promote this important public policy at all levels of government in Canada. I think this would be an ideal role for one of our professional or trade associations. *MA*

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