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Fairness monitoring

by David Newman

...the past, present and future

THIS IS A BIT of a different take on the Chatroom. Before everyone cries foul and gets up in arms, I assure you we'll still chat, but this time around I feel we're exploring particularly new, relevant and interesting ground (*not that we don't do that every issue, of course – ed.*), so I'm pontificating and opining myself just a wee bit more than usual.

We have an impressive array of participants (*as we do in all Chatrooms, of course – ed.*) this time around – so much so that I've taken the unusual step of adding professional designations to names. That also relates to our discussion, which in part includes professional qualifications.

David Swift has been around purchasing much of his relatively young life, including the strategic development and support of the Materiel Management Institute. He and some talented colleagues have hung out a shingle and their RFP Solutions venture provides a wide range of procurement and management consulting. Swift not only knows the nuts and bolts of procurement,

ment, is based out of Ottawa. Our fourth participant, Ron Boothby, is a management consultant and project manager with a strong background in private sector defence and other contracting, who has worked in senior jobs for firms such as Paramax, Unisys and, as a contractor at General Dynamics. He also, among other sins, was a company liaison in Britain during the first ill-fated Sea King Helicopter Replacement program.

So, just what is this fairness business and what should it have to do with public procurement? For public purchasers who are not already into this up to their eyeballs, a fairness process is third party scrutiny of the contracting process. It is usually used for major public procurement projects. The fairness person is engaged by the buyer as part of the contracting process and attests that the contracting was fair.

What it is, therefore, depends on who you ask, but there seems to be a consensus that fairness monitoring is both a product of our times – open, litigious, participatory

tion, criteria development, RFP development, solicitation, bidder contact, bid receipt and opening, evaluation, selection and de-briefing. The fairness person is an independent, non-voting advisor and observer throughout the process, ensuring fair, consistent and reasonable treatment for all bidders. That also means attesting to that fairness and testifying at tribunals, review boards and court proceedings.

The profession has progressed to the degree that practitioners are self-defining and differentiating service. A definition that I find helpful in understanding some of the nuance is the difference between a process monitor, a fairness monitor and a fairness commissioner. A process monitor is a witness who does not participate, simply observes and minutes the process. A fairness monitor will keep records, too, but will also alert participants to any potential contraventions, provide requested advice and steer the process. A fairness commissioner adds to those elements with an even more active role by actually influencing process design and conduct, making judgments and intervening to ensure fairness and reasonableness.

If the process is in the end fair, each of them will produce a report outlining the contracting process and attesting to its fair conduct. Even if this third party professional reporting didn't cover all fairness, it could well be a valued contribution to government contract management.

So where is this fairness business going and what's it going to mean to public procurement practitioners? The truth is we are witnessing the birth of a profession and current practitioners, fewer than 50 of them in the whole country, are true pio-

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but has his finger on the pulse of the broader strategic issues in public purchasing. His colleague, Frank Richter is an experienced fairness professional based in Kelowna, BC, with a broad, senior 35-year background at the RCMP in auditing, procurement and corporate management. Howard Grant is a respected, oft-consulted fairness commissioner with more than 10 assignments under his belt. He also has a strong grip on the public procurement, business and management world. His consulting operation, Partnering and Procure-

and information loaded, post 9/11, post Enron, post sponsorship scandal and post Radwanski – and a risk management safety valve for political and process deniability. But it would be a grave mistake to simply dismiss the fairness trend as passing fancy, or as a simple “cover your butt” exercise. It is real and increasingly pervasive, not to mention especially attractive to politicians.

Most practitioners recommend that a fairness person be involved in all stages of the procurement from the very beginning. That means requirement identifica-

neers. That doesn't mean we should picture the wild, unruly old west, full of fly-by-night opportunists, gunslingers and flim-flam artists – far from it. This is a profession of highly respected, well-qualified and ethically-oriented professionals who are responding to a demand, rather than creating a supply. That is obvious to me and, I hope, to you in our ensuing chat. However, there are still a whole lot of serious issues related to the advent of fairness processes.

The government buyer hires, selects and pays the fairness person. The government department defines the fairness mandate in the RFP that announces the requirement. There do not seem to be any common definitions for fairness, nor are there common standards or processes. Indeed there are no common qualifications for fairness people. In a system that is there to credibly attest to the conduct of a process, this seems a glaring weakness. There is no standard reporting mechanism or process. In fact, nothing says a fairness report must even be made public.

It is clearly early days in the whole business though more than one major supplier has been heard to say they like it so much that they are now hesitant to bid on a large

public contract unless there is a fairness process involved. Yet there really is no evidence at this point on how the results of fairness processes will be judged. Will the CITT take them into account? Will they weigh the views of one fairness person over another? Will the process be truly embraced by bidders? What happens when the first corrupt or tainted fairness process or report comes about? Will the baby go out with the bathwater?

Let's ask a few more questions, some of which are addressed in our chat, some of which are not:

- If a fairness person is hired by the buyer (representing the government), what are the chances he or she will be influenced to take the government side, especially if their ongoing livelihood depends on future contracts?
- Will the word get around that one fairness person or another has a particular reputation, say as a hanging judge, and gets hired for a particular result?
- How truly independent is the fairness person? Do their ethics include a whistle-blowing obligation? Who makes sure the fairness person is fair?

- To what extent should the fairness commissioner be expected to represent the “public interest,” that of the citizen, not the government? Where does the politician fit in?

These and many other questions will inevitably lead to government responses. To be credible at all, I think this is an industry that governments will inevitably be drawn into regulating, whether they want to or not.

To address these and other issues, we are very likely to see a professional association of fairness people. We may even see the establishment of a fairness process body, perhaps one that is a public-private partnership to oversee the whole business – to set standards, qualifications and perhaps even to independently appoint fairness people to a given contract, not unlike the appointment of mediators and arbitrators. We may even see the development of a certified professional designation – read ‘new career path for procurement practitioners’.

But I'm getting confused on my role between journalist, consultant and guru. Enough from me – turn the page and let's chat!

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