



Part 2 Here today, maybe to stay

Professional services

by Irene Gessler

"Experience is one thing you can't get for nothing."

—Oscar Wilde

THEY ARE GENERALLY experienced and highly qualified. They are professionals in a wide range of occupations – communications, engineering, architecture, health, education and many others.

They work on *per diems* ranging from \$300 to \$1,500. They can make plenty of hay when the sun shines. When it doesn't, they just tighten their belts and wait for a break in the clouds.

Lately, the sun has been shining on them a lot and their belts are barely notched. They are professional services consultants and, in 2003 alone, the Government of Canada spent \$6.5 billion on their services.

With the use of their services by government at all levels increasing by more than 50 percent over the last decade, professional consulting is very much a growth industry.

Although the factors leading to this growth are not completely clear, it is thought that they could include the loss of human "capital" as a result of the federal government's recent downsizing exercise, the flexibility offered by contracted services and the increasing need for specialized expertise too costly to retain within the public sector.

What is clear is that there is money – sometimes a great deal of money – to be made working as a professional consultant to government.

So, how does one go about getting a piece of the action? What methods do governments use to select professional services consultants?

There are many methods used, says David Swift of RFP Solutions.

One of the most common methods is posting a request for proposals (RFP) on MERX – the official federal government electronic tendering system – to solicit competitive bids for services required. Following a thorough evaluation of all bids received, the winning bidder or bidders are

issued a standing offer to provide the services on an "as and when required" basis.

Other methods by which professional services consultants are selected include supply arrangements, ACANs (Advanced Contract Award Notices) – wherein one uniquely qualified supplier is awarded a contract without competition, and sole sourcing. Sole source contracts can also be awarded without competition as long as the total contract value is less than \$25,000.

Is the selection done by company, and does the buyer get the individual designated by the company to do the work?

It can work both ways, says Swift. "Sometimes the buyer doesn't care [who the company provides to do the work] as long as the designated individual meets the profile of required skills. Other times," he says, "the company must name its resources and provide a description of their qualifications."

How long can a consultant be hired before being considered an employee?

This is a huge issue, Swift says, because it relates to the formation of the employer/employee relationship, which is not easy to define.

Framed another way, the question then becomes: are professional services consultants employees or are they self-employed individuals?

Canada Revenue Agency's website provides the most definitive answer to this question: "To determine if a worker is an employee or a self-employed individual, and thus if there is an employer-employee relationship or a business relationship, you have to examine and analyze the terms and conditions of the worker's employment as they relate to the following four factors: control, ownership of tools, chance of profit/risk of loss, and integration."

Control is the most important factor.

"Generally, in an employer-employee relationship, the employer controls the way

in which the work is done and the work methods used ... the payer exercises control if he (or she) has the right to hire or fire, determines the wage or salary to be paid, and decides on the time, place and manner in which the work is to be done. In a business relationship, however, the payer does not usually exercise control over the worker's activities. The worker can decide how the work will be performed."

The ownership of tools is the next factor to be considered.

"In an employer-employee relationship, the employer generally supplies the equipment and tools required by the employee. In addition, the employer covers the costs related to their use such as repairs, insurance, transport, rental and fuel. In a business relationship, workers generally supply their own equipment and tools and cover the costs related to their use."

The third factor to be considered is the chance of profit and the risk of loss.

"Generally, in an employer-employee relationship, the employer alone assumes the risk of loss. The employer also generally covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, and delivery and shipping costs. The employee does not assume any financial risk, and is entitled to his (or her) full salary or wages regardless of the financial health of the business. In a business relationship, the self-employed individual may make a profit or incur a loss. He (or she) also covers operating costs."

If the first three factors do not clearly determine the nature of the relationship between the payer and the worker, the final factor, integration, should settle it.

"Integration has to be considered from the point of view of the worker, not the payer. Where the worker integrates the payer's activities to his own commercial activities, a business relationship probably exists. The worker is acting on his own behalf, he is not dependent on the payer's business and he is in business for himself.

Where the worker integrates his activities to the commercial activities of the payer, an employer-employee relationship probably exists. The worker is acting on behalf of the employer, he is connected with the employers' business and is dependent upon it."

So, in the case of professional services consultants, while a contract is entered into, the nature of the relationship is not purely contractual when weighed against the four factors that determine whether a worker is an employee or a self-employed individual.

Whatever their designation, when selecting consultants the buyer wants to know that he or she is getting the best person to do the job.

But how is this to be determined – by selecting the consultant who comes in with the lowest bid or the one with the best references? Which is correct?

"Both are correct," Swift says. "It depends on many factors. You can't set a formula but, if you get the mix right, you'll get the best qualified person."

Certainly, the consultant's record of success must be taken into account. But, he adds, you have to consider that level of success in a variety of ways – and with more than a dollop of caution.

Caution on the part of the buyer is very much needed when faced with what Swift describes as "the beauty pageant." This is a situation wherein a bidder proposes people with impressive credentials to ensure that the bidder wins the bid and gets on the department's list of suppliers. However, Swift says, by the time the call-up comes

through, those "bright, shining stars" are not available.

Departments have now become much more cautious and have put in place two main mechanisms to avoid being tripped up by "the beauty pageant." The first mechanism involves qualifying firms. The second involves permitting only those people named in the bid to do the work.

Basically, it all comes down to how the buyer writes up the RFP, according to Swift.

Swift, whose company develops RFPs for government clients with complex and/or high-dollar-value requirements in a variety of professional service areas, says a clear, well-written RFP is the key to getting the best person for the job.

That seems to suggest a simple solution were it not for one thing – RFPs are not easy to write. They are complex documents, sometimes running to several hundred pages in length. RFPs are usually written by several people including the contracting officer and the program manager.

All contain a number of standard clauses such as those relating to Canadian content, conflict of interest and international sanctions. They also contain specific instructions to bidders concerning the proper format and presentation of their offer, a description of the requirement and a statement of work specific to the particular RFP along with a description of its mandatory and rated requirements.

It is these last two elements that are crucial. If the description of the mandatory and rated requirements is unclear, it will not only confuse but possibly completely discourage potential bidders thus reducing the size of the bidding pool and, consequently, the employer's chances of getting the best person or persons to do the job.

This raises the question of whether there is a way to improve the process of hiring consultant help.

According to Swift, there are only two ways in which this can be accomplished.

"Writing a good RFP is a way to start. You have to be clear about the deliverables in order to establish a meaningful basis of selection."

Another way, he says, would be to establish a government-wide pre-qualification list. "That way, you wouldn't have to go through the whole process each time."

Swift says people need to be trained to write good RFPs. That, he says, is why the federal Materiel Management Institute (MMI), of which he is vice-president, is currently running half-day sessions on writing RFPs.

Bob Kelly shares Swift's sentiments about people needing training to write good RFPs. Now retired, Kelly is the former director of procurement policy for the Treasury Board of Canada.

Kelly knows of which he speaks. He is firm in his belief that RFPs need to be well written but understands that they are difficult to write. He is, therefore, enthusiastic about the MMI's RFP writing initiative.

He is also supportive of the federal government's use of professional services consultants, particularly in certain circumstances.

"The government sometimes needs to use consultants in unique trades or with unique qualifications. In circumstances such as these," Kelly says, "it is more economical to go to the market on an 'as and when required' basis than to hire someone full-time."

Good, bad or indifferent, professional services consultants are currently under the microscope of an eight-month review by the Government of Canada. The two-phase review, which began in February 2004 and ends in September 2004, is examining the pattern of use and the appropriateness of professional services across the federal government.

It is anticipated that the review will result in a clearer understanding of several things including the factors that have led to the high growth rate in the use of professional services consultants over the past 10 years, future trends in that growth, and an assessment of both the advantages and the disadvantages of using professional services consultants within the federal public sector.

A key result of the review is expected to be improvements to ongoing data collection and reporting measures to support decision-making and accountability. And that, to borrow a famous phrase, can only be a good thing. ■■■

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