

Trouble up, oversight down

Why reduce the influence of the Treasury Board Advisory Committee on Contracts?

by R. J. Kelly

When trying to make sense of today's conundrums, it is sometimes helpful to know a little history. On April 5, 1950, the Cabinet approved the establishment of an interdepartmental committee on contract forms and procedures. This committee, made up of named senior officials and chaired by the then comptroller of the Treasury, was directed to review and report to the Cabinet on the policies and practices of government departments in letting contracts and related matters, and to recommend needed or desirable changes in policies, practices and procedures.

By 1959, the committee had become the Treasury Board Advisory Committee on Contracts (TBACC). At its first meeting that year, TBACC noted that its mandate was:

- a) To consider and report to the Board on any matter involving the form and procedure of Government Contracts or the Contracts Regulations that is referred to it by the Board, and
- b) To consider and report to the Board on any matter involving the form or procedure of Government Contracts or the Contracts Regulations that is referred to it by a department."

By 1984, the committee's mandate had been further extended to anything concerning contracts that the committee felt should be looked at – in other words, TBACC did not have to wait for a request from the Treasury Board or a department before examining a problem.

What was unique about the TBACC mandate was that it was an advisory committee that reported to the Treasury Board Ministers, not the Treasury Board Secretariat (TBS). While this writer can only think of two instances where TBACC felt it was necessary to write directly to the Treasury Board, the fact that this right existed served as a check and balance with respect to the activities of the TBS.

During the committee's heyday, any proposal dealing with contract policy crafted by TBS had to be run by TBACC. If TBACC did not give its support, the proposal did not move forward, thus ensuring that any new policy would be workable by the departmental officials who would have to implement it. TBACC membership consisted of individuals from many government departments who were involved in contracting in a practical sense and on a daily basis. Many times policy proposals conjured up by the central agency folks were just not practical and TBACC said so.

TBACC flourished for many years growing to a two-tier structure: a main committee made up of officials at the assistant deputy minister level; and three working level committees with representatives from interested departments chaired by one of the assistant deputy ministers from the main committee. The three subcommittees were

responsible for construction matters; services and research and development; and general (anything that did not fit into the other two subcommittee responsibilities).

By the early 90s, the main senior level committee had ceased to function and the need for the services and R & D subcommittee seemed to disappear. The other two subcommittees continued to meet and contribute to policy development.

In the fall of 2002, the then current role of TBACC was being questioned – the meetings had evolved into information or briefing sessions led by the Treasury Board Secretariat or program departments who had developed new programs that would affect contract administration. Consequently, a special working group was established to review the mandate of TBACC.

This working group met several times over the early part of 2003 and several versions of a draft report were developed that contained recommendations for a more enhanced role for TBACC. However, sometime in the spring of 2003, the special mandate of reporting directly to the Treasury Board was rescinded, without input from the TBACC membership or the working group that had been diligently working on this subject.

It is the prerogative of the Treasury Board Ministers to make decisions as they see fit. But, why was this decision made during the period when hundreds of person-hours and their related cost were being consumed by the special working group, and before their recommendations were even formulated? It is presumed that a recommendation to change the mandate of TBACC was drafted by TBS and the Treasury Board agreed. Since the Board's deliberations are still secret, it will be many years before we will really know what rationale was put to the ministers and what their views were in making the decision.

Departments were never told about this change; the Treasury Board Contracting Policy was quietly amended to reveal an emasculated TBACC remnant that could still exist, but its privilege to advise the Treasury Board on its own was no more.

It is interesting to note that at least since 1997, Canada's Auditor General has issued several reports about poor contracting practices in government.

In December 2003, the Prime Minister expressed personal concern about contracting and established a special Task Force on the Government-Wide Review of Procurement.

It has been suggested that the 2004 election results are, in part, due to certain contracting irregularities.

These are instances where procurement policies and practices have attracted a lot of attention and at the same time, the Treasury Board has reduced the influence of the Treasury Board Advisory Committee on Contracts. One wonders what the logic is in all this.

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