



## Dreams of a reformed CITT

**T**HE CITT'S PROCUREMENT review function is critical to the integrity (and the public's perception of integrity) of the federal procurement process. It is also a crucial element of Canada's compliance with its trade agreement obligations. Any watering down of this role would be a regrettable step.

However, I think a number of changes should be considered. First, the tribunal should act more like it does in other types of inquiries it carries out and take a more active investigatory role. For example, its staff should be involved in seeking complete disclosure of relevant evidence from complainants, government entities and third parties.

I would also afford the tribunal with the power to extend the review timelines to allow all parties adequate time to participate in the investigation and to allow the tribunal a reasonable period of deliberation before making a decision and delivering reasons. Where the complainant can be adequately compensated with a monetary award, the CITT process need not be disruptive to government operations and the strict 90-day time line seems excessively short. Perhaps, if the tribunal were allowed more time to make decisions and deliver reasons, the quality of both would improve.

It is time for a full review of the last 10 years of CITT procurement review experience. Broadening its role should be considered so the tribunal can provide advice or advanced opinions to the government on, for example, whether particular RFP clauses comply with the trade agreements. Ensuring that the government must implement tribunal recommendations should also be examined. Any proposal that improves the process and enhances federal procurement overall should be put on the table. But the right of independent review provided by the tribunal should not be limited. On the contrary, what the federal government should promote is equivalent review rights at the provincial level. *PL*

**A**s an advisor to federal purchasers, I think the CITT is a necessary part of the government system of checks and balances (and a fundamental part of Canada's international trade commitments). That said, however, I would like to see the CITT take on a more minimalist role as adjudicator of bid challenges and a greater role as advisor of how to properly conduct a procurement. Too often, in CITT decisions, what offended the CITT and exactly how it could be avoided in future are absent or lacking in detail.

I think the level at which the CITT has jurisdiction should be raised to the equivalent level of other countries under *NAFTA* or the *WTO-AGP*. It makes economic and trade sense to have a CITT adjudicating bid challenges of contracts valued over \$100,000. It makes no sense for \$25,000+ contracts, especially in light of the increasingly complex and legalistic environment of the CITT. The easiest way to accomplish this would be to repeal Article 514 of the *AIT* (and roll any procurement remedy into the provincial *AIT* enforcement system of Article 513 of the *AIT*). This would also have the effect of removing from the *AIT* the current contractual absurdity that the federal government can be sued (in effect) at the CITT and be made to pay suppliers if the *AIT* is breached but the provinces can not be sued or made to pay if they breach the *AIT*.

Finally, since I am dreaming dreams here...and dreams do come true, I would like to see the CITT subject to the same judicial appeal process our trial courts must endure. To require that a CITT decision must be "patently unreasonable" before it can be overturned is too high a standard of deference for an adjudicating organization that acts as both investigator and judge, in secret, without public hearings or rules of evidence. Too much deference can (and, I think, in the federal government's case, does), harm the procurement process more than it fosters it. *RW*