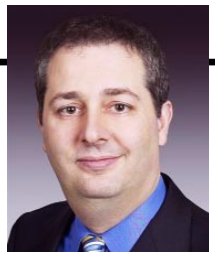
Leasing lives on

Toronto's MFP scandal provides lessons



by Guy Giorno

THOSE WHO MERELY read the news headlines might be forgiven for thinking that Toronto's judicial inquiry into computer leasing and external contracts cast a pall over public-sector procurement in general and leasing in particular.

Madam Justice Denise Bellamy's report in the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry far from closed the door on sale-and-lease-back arrangements and other alternative methods of procurement and financing. The report clearly concludes (recommendation 169) that "Leasing should remain a viable financing option for the City."

Launched in 2002, the two inquiries involved 22 parties and 156 witnesses and spanned 214 hearing days, culminating in the September 12, 2005, release of a four-volume report.

While leasing was a significant focus of the inquiries, what attracted criticism was how Toronto handled particular leases, not the leasing concept itself. After all, as the report noted (Volume 1, p. 98), some 85 percent of public and private sector organizations lease IT assets. The baby of leasing should not be thrown out with the bath water of unethical behaviour and negligence uncovered by Justice Bellamy. Instead, her report (**www.toronto.ca/inquiry**) should be treated as a "how to" manual that illustrates pitfalls to avoid and suggests best practices to emulate. Readers can draw at least 10 common sense conclusions.

First, rules to prevent conflicts of interest must be clearly defined and rigorously enforced. In Toronto's case, a senior official maintained an undisclosed sexual relationship with a supplier. Not only was her conduct contrary to city policy, it also compromised her objectivity in dealing with the supplier and making recommendations that concerned him.

Second, lines and limits of authority must be respected. Justice Bellamy listed numerous failures to respect proper authority, ranging from avoiding limits on individual signing authority by splitting contracts, to making unauthorized acquisitions, to failing to bring fundamental decisions (such as issuing an RFQ or renewing a lease) before city council for approval.

Third, an organization about to execute a major contract should understand what is involved, and obtain legal advice where necessary. In Toronto, officials failed to read or understand complex lease documents. There can be no excuse for a purchaser or lessee to sign an agreement without fully comprehending it. Recommendation 170 of the report is explicit: "The City should not enter into a leasing contract without the expertise to evaluate and implement it successfully."

The fourth point is related: within the organization, accountability for the transaction must be clear, and senior employees must assume responsibility. Many of Toronto's problems flowed from confusion – everyone thought someone else was reviewing the transaction to protect the city's interests. Further, managers failed to take proper responsibility to oversee procurement. A bargaining unit employee was assigned to issue an RFP without managerial oversight or supervision. A consultant, not actually employed by the city, was responsible for negotiating a multi-million dollar contract. An outside consultant was put in charge of hiring other consultants.

Fifth, the "sales pitch" of a company seeking to do business with the institution is no substitute for an objective analysis of pros and cons by the institution's employees.

Sixth, when employees report to municipal council (or to cabinet or the board) on a proposed transaction, they must present complete, candid, accurate and understandable information. Justice Bellamy found lapses on both counts.

Seventh, everything must be documented and all documentation should be read. For example, drafts of an RFP should be numbered and the reasons for successive amendments should be carefully recorded. Similarly, bids received by telephone must be documented. Further, documents that are received from outside, such as invoices, must be read before they are processed. Other public sector organizations can learn from Toronto's mistakes in these areas.

Eighth, confidentiality must be respected. Justice Bellamy was rightly critical of giving confidential city information to a lobbyist. The integrity of the procurement process requires that information such as draft RFPs be closely guarded until the time of public release, at which point everyone should learn it at the same time.

Ninth, during an RFP process, communication to the institution must be carefully controlled. The report recommends obvious safeguards, including a communication blackout period and the identification of a single contact (someone who will not take part in the evaluation) to answer questions about the RFP.

Tenth, the procurement process should clearly distinguish between the role of elected officials and the role of the staff. Politicians should determine the policies within which the institution's employees operate, and may debate particular procurements in public meetings. Otherwise, they should have no involvement in specific procurements. (In fairness to Toronto's councillors, it should be noted that, of what was then a 57-member body, Justice Bellamy identified only one elected official whose conduct crossed the line.)

To its credit, Toronto has already taken some steps to address the systemic deficiencies identified in the report and to protect against inappropriate behaviour and lapses in judgement. Nonetheless, the Bellamy report provides an opportunity for all public-sector organizations to review and update their own policies and practices to ensure that the public interest remains paramount in all procurements.

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