



Purchasing professional consulting

Part III: Recruiting and contracting with transparency

by Steve Bauld and Kevin McGuinness

IN OUR LAST two articles, we discussed the difficulties inherent first, in trying to decide when it is advantageous to retain a professional services consultant; second, in specifying the kind of work that the consultant is to carry out; and third in determining how well a prospective consultant will fit in with council and the municipal staff. In this article, we will look at the manner of recruiting professional consultants.

The problem: sole supply arrangements

The problems associated with purchasing professional services begin with the circumstances in which professionals are very often retained. It is generally accepted that so far as is practical, public procurement should be conducted in a manner that is open, transparent and fair. While there is no unanimity as to how best to achieve these three goals, very often the circumstances surrounding the retention of a private sector professional consultant are such

as to make it unlikely that any of them will be attained. Since openness and transparency facilitate accountability, any inability to adhere to the standard model of procurement is obviously a matter of concern. Given the need for confidentiality, the fact that different consultants offer different types of expertise, and the fact that the need for such services is often urgent, it is not surprising that many municipal consultancy arrangements are put out to market on a sole supplier basis.

Sole supply arrangements encourage skulduggery of various kinds. Most government management information systems do not facilitate the collection of data in relation to consulting contracts. However, anecdotal evidence suggests that very often such contracts are awarded at just below the threshold for a compulsory tender or RFP, to individuals who are anything but at arm's length to the client department. It is far from unusual to find that a series of contracts for different phases of a consulting project are awarded to the same consultant – and always at a price just below the threshold for a compulsory competitive process.

Open and transparent vs. closed and opaque

If there is a problem with sole sourcing, the obvious solution is to introduce methods that make it less likely to occur. Like many things, this is easier said than done.

Where there is an urgent need to obtain professional advice – as, for instance, is very often the case where there is a rapidly

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developing underlying problem – the need to obtain timely assistance may render it entirely impractical to employ any form of competitive process in awarding the contract. Moreover, all professional service providers are not alike. The most serious problems cry out for the most sophisticated advisors. If there is only one firm that can provide the requisite service, then competition is impossible.

The specialization of professional service providers is far from the only circumstance that undermines an open and competitive procurement process. The need for confidentiality (especially where legal proceedings are pending) can reinforce the forces that push municipalities to retaining professional service providers in something other than an open and transparent manner.

Other relevant circumstances include whether the current need for professional services involves some prior matter, with the result that a prior provider would be able to service the municipality's account more cheaply and more efficiently than a new service provider.

To circumvent this sort of problem, many governments favour the creation of rosters of pre-qualified professionals, who can be looked to for service as needs arise. However, rosters tend to favour the selection of “full service” firms over more specialized boutique practices. As we will discuss below, this bias and selection is often not in the client's best interest.

Past experience

Generally, an RFP for professional services will ask proponents to provide a summary of their experience with the subject work, and to identify the specific qualifications of members of the firm

that make it especially qualified to perform the work that the municipality has in mind. Firms will also be asked to list similar engagements that you have performed in the past – ideally from the office that will service the municipal account.

There is a certain logic when selecting a consultant to focus on those consultants who have carried out similar work in the past, particularly where the work in question has been carried out for a comparable client such as another municipality. For this reason, consultants are often asked to provide extensive historical information describing in detail work of a comparable nature and the qualifications of the particular staff that make them suited to carry out the work. One problem with this approach is its backward focus. A firm may have more impressive historic experience than an up-and-coming firm, but the firm may be past its peak performance.



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Another concern is that past experience is no indication of willingness to commit to the service of a client. New entrants into a field are often highly attracted by government work, because it

carries a prestige value with it. Even loss-leader work for a government client may be attractive, because the experience of working with a government may allow an expanding firm to obtain more lucrative private sector work in the future. In contrast, established firms that can pick and choose who to work for may be less likely to take on additional government work – particularly where (as is often the case), the government seeks to cap the hourly rates of the professionals performing the work.

Past experience is obviously important, but in no case should it be considered *all* important. For a professional, the most critical experience is the ability to take on a major project and to deliver a high quality work product on time. A person with a long track record of innovative work is quite probably up to any kind of work, whether or not he or she has direct experience. Since municipal (and other government) work very often has unusual features that set it apart from a typical private sector project, it is important to identify how well a prospective consultant can adjust to such complicating features of the proposed work assignment.

Creating viable rosters

Planning for anticipated requirements

In business, developing the ability to forecast demand for particular services is a key component of the overall strategic planning and budgetary process. Some forms of professional service are more susceptible to forecasting than others. In the labour relations field, it is possible to predict some professional service needs by reference to the normal cycle of collective bargaining. Other aspects of demand, as for instance in relation to grievances, can be estimated on the basis of past experience. For routine or recurring work which has little

variation from year to year, forecasting demand is as realistic for professional services as it is for any other product or commodity.

Basic roster arrangements

Most municipalities which survey their past consultancy contracts will quickly realize that they require widely different types of service from time to time. Once a municipality has identified the type of problems of a given kind that it has experienced over a reasonable period of time, it is possible to begin assembling a roster of qualified experts, who can be asked to participate in a closed bid for municipal work. Since the roster is assembled at leisure and does not involve any specific project that might give rise to confidentiality issues at the roster stage, the competitive process can be kept open. It is only when a consultant is sought for a prospective assignment that there is a need to move to a more closed approach to recruiting.

The purpose of a roster is to create a list of potential suppliers who are capable of carrying out the bulk of the work that is likely to arise over a planning cycle. To accommodate the changing needs of the municipality and the changing nature of the suppliers who may potentially serve it, rosters must be of relatively short-term duration.

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As well, there is a significant variation from one professional field to another. It is difficult to assess potential professional service suppliers but

it's easier when suppliers offer a realistic assessment of their own expertise. For example, unless a client has had a broad range of experience in a given field, it is difficult to compare the quality and range of professional services offered by one law firm to those offered by another; however, lawyers tend to be somewhat more open concerning their own limitations than many other professionals. Rosters permit law firms to be recruited to service the changing needs of the municipality on the basis of established expertise to service each given practice area.

Business consultants often present themselves as being able to provide useful advice regarding any kind of activity. This is true only in the sense that such firms bring to such projects financial analysis and high-level business skills. When the same firm offers its services (and often puts forward the same staff) as advisors for such disparate types of activity as a P3 crematorium, the privatization of a golf club and the construction of a new football stadium, one can generally assume that the firm has no specialist skills in these areas.

Expanded roster systems

To circumvent problems of the foregoing kind, one option is to pre-qualify potential suppliers to meet specific needs, using an expanded roster system. Generally speaking, most roster systems seek to identify professional firms, each of which is able to serve a wide range of needs in a related area. Instead, it might be more advantageous to identify rosters of potential consultants who are able to meet needs in

relatively narrow fields. An expanded roster system seeks to identify firms that are able to service each individual need. Each consultant seeking to pre-qualify is invited to bid for its strongest areas of expertise. Preference in selection of suppliers is given to those suppliers that can demonstrate that staff have genuinely specialized training and experience. Although, in principle, a large firm could cover the field, the same staff cannot be put forward in an effort to cover numerous disparate fields.

Under the expanded roster system, when the need to retain a professional consultancy firm arises, the need will be met by a firm whose staff are fairly specialized. By adopting such an approach, more specialized boutique firms (e.g. a labour or environmental law firm) can pre-qualify to perform work of a particular kind.

An expanded roster system should be structured so as to provide for a flexible, efficient and municipal-wide approach to the hiring of consultants of a given kind. Buyers need to be made aware of how to work with the different lists, and how to identify why a specialist of one kind is preferable to a specialist of another. Buyers should also be encouraged to consult with the appropriate in-house professional department (e.g. finance with respect to accountants, legal with respect to lawyers), when dealing with a procurement exercise relating to those areas of expertise that can be suitably matched within the municipal bureaucracy. 

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