



Testing, testing, testing

...for

transparency and fairness

In this period of hurried government infrastructure funding, how can you be sure that contracts being awarded are a result of a fair, open and really competitive process?

ON HIS FIRST day in office, President Obama confirmed that fair, open and transparent would be guiding principles in his administration. He also announced that *Freedom of Information* legislation would be used to release information, not withhold it.

MSNBC (www.msnbc.msn.com/id/28767687/) reports that Obama said he would change the way the US federal government interprets the *Freedom of Information Act (FOI)*. He said he was directing agencies that vet requests for information to err on the side of making information public – not to look for reasons to legally withhold it – an alteration to the traditional standard of evaluation.

In Canada and the USA, billions upon billions of dollars is being, or about to be, spent by public agencies to help with the economic recovery. How can we ensure the process for awarding these contracts is fair and open, and is seen to be fair and open? We could simply have each agency voluntarily report on the process it actually used without forcing the public to use an *FOI* or, in Canada, an *Access to Information (ATI)* request, as a test of fairness. The *ATI* and

FOI process is often untimely, cumbersome and not without a certain level of cost to both sides, but it can be a useful tool in holding public agencies to account.

However, when accountability is ‘built in’ and driven from ‘inside’ the process, the taxpayer gets the information in a timely and less expensive manner and you do not have to spend time responding to *ATI* requests or challenges before the courts.

In my opinion, to implement this accountability mechanism would be easy: each agency would be required to complete a simple checklist as it proceeds through the process of finding a contractor. This checklist and the accompanying information would be identical to the information that an interested citizen could obtain under an *ATI* or *FOI*. And when the contract has been awarded, the information would be released with all of the award information. This is a simple, low cost, totally transparent and easily understood procedure that would restore confidence in fair, open and transparent government contracting.

What should that checklist contain?

Here are some critical questions and solutions:

1. Who prepared the specifications? If an outside firm or individual prepared the specifications, was that firm/individual prohibited from submitting a bid or proposal? *Include the name of the person or company who prepared the specs. Include a statement as to whether they were permitted to submit a proposal.*
2. How much time was provided for the vendor' to prepare their offers? *Too little time restricts competition and rewards those who have ongoing dealings with the agency. If the deliverable was a complex product or service, did the agency give the vendors at least three weeks to respond? Explain how much time was allowed and why.*
3. Was the list of firms/people who received the bid documents published while the competition was still open? *Include a copy of that list.*
4. Was the list of vendors who submitted offers published as soon as the competition is closed? *Include a list of those vendors.*
5. For a request for proposals, did the RFP identify the evaluation factors, the importance of each factor and the evaluation process? *Include a copy of the evaluation factors and their weights.*
6. Was the evaluation performed by a committee that had strict rules related to (i) confidentiality of information, (ii) conflicts of interest related to vendors, and (iii) behavior during the time of the competition? *Include a copy of those rules.*
7. Are the evaluators' notes and scoring sheets preserved as a record of the deliberations? *Include all copies.*
8. Was the contract as executed substantially the same as the statement of work contained in the invitation documents? *Include a statement addressing the issue.*
9. Was the recommendation memo a public document? Did it identify the answers to questions 1 through 8? *Include a copy of the recommendation memo.*
10. Can losing vendors receive a debriefing from the agency to discuss the merits of their offer and why it was not selected? *Include a copy of all vendors receiving a debriefing.*

In my opinion, if you gave your agency a point for each yes answer to the items above and you scored 8 to 10 points, your agency is exemplary and supports the objectives of fair, open and transparent competition. Scoring less than 8 indicates room for improvement.

The requirement to publish these checklists would naturally lead to stricter compliance to those good public policies already in place. Being proactive and releasing the information without an *ATI* or *FOI* request could be bold, but at the very least, it could go a long way to instilling public confidence in the process and in the agency. With all the public money about to be spent, a little confidence that it is being well spent couldn't hurt the national morale. 

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