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**Circulation**

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**Subscription Information**

**Tel:** 1-800-575-1146 or 613-688-0768  
**Online:** [www.summitconnects.com](http://www.summitconnects.com)  
Subscription Rates (1 yr)  
Canada: \$21.95 + applicable tax  
International: US\$21.95

Publications Mail Agreement: 40016453  
Business No: 87996 3791 RT0001  
Return undeliverable Canadian addresses to:  
Summit Group  
263 Holmwood Ave, Suite 100, Ottawa ON K1S 2P8

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Summit magazine is the professional publication of choice for members of the Canadian Public Procurement Council and the Canadian Institute for Procurement and Materiel Management.

Vol. 12, Online No. 4 ISSN: 1481-4935

©2009 Summit: Canada's magazine on public sector purchasing  
Published by Summit: The Business of Public Sector Procurement Inc.  
o/a The Summit Group  
**Tel:** 613-688-0762 **Fax:** 613-688-0767

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As P3s become more prevalent so does the range of professional advisors that provide the glue that can hold the partnership together.

by John Chenery

**Crunching P3s – delivering transportation infrastructure in a recession**

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by Ian J. Houston

**The Job Order Contract RFP**

...provides a new approach to construction contracting, especially for projects in the \$50,000 to \$500,000 range.

by Vince Duobinis and Kelvin King



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**ADDING up SAVINGS**

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by Scott Wilson

**Come on out to the CPPC Forum**

This annual forum, this year in Victoria is your opportunity to learn, share and network with your colleagues across Canada.

**meet**

**Sydney Monteith**  
face to face

Sydney, based in the Cariboo-Chilcotin region of BC, is an operations technician and contracting officer with the BC Ministry of Forests.





# economic crisis calls for precision drafting

by Paul Emanuelli

AS WE STAND in the grip of a global economic crisis, government leaders around the world are embarking on unprecedented spending sprees. Their plan is to inject billions of dollars into the marketplace to stimulate an economic recovery. Much of that spending will occur through procurement projects in every conceivable area from construction to technology. This is not the first time that procurement professionals have been called on to deliver extraordinary results under pressing conditions. Nor will it be the last.

As a procurement professional, you will always face overwhelming pressure to get to market as quickly as possible with your tenders and requests for proposals. Paradoxically, as your tightening timeframes are compressed even further, you will also be put to the highest standards of probity in spending and transparency in process. The initial rush to market will be replaced with a rush to judgment if mistakes are made or standards are not met.

Procurement professionals face the conflicting pressures of accelerating timeframes, shrinking

resources and rising due diligence standards. To help you achieve rapid assembly, solid construction, readability and defensibility in your procurement documents, you have to take a proactive approach to legal issues.

The following seven stages, derived from my *Precision Drafting Code*, distil concepts from a quarter century of case law, from an international survey of leading institutional practices and from years of front line experience in the procurement process and it offers a streamlined framework for managing your drafting process.

## 1. The initial mapping statement

The first step in your drafting process should be designing a clear and concise initial mapping statement that accomplishes the following:

- explains what you are buying;
- provides the road map for the rest of your document; and
- serves as a framework to organize your team for the drafting process.

## 2. Detailing requirements

Once you have summarized your requirements, you need to flesh them out. To build efficiency and precision in your drafting process, you have to balance plain language with technical content by leveraging the principles of legal construction and interpretation. You need to structure your documents so that technical details (e.g. detailed specifications, legal agreement terms, etc.) are left to the subject matter experts in their discrete subdocuments while the main document uses plain accessible language.

*Procurement professionals face the conflicting pressures of accelerating timeframes, shrinking resources and rising due diligence standards.*

### 3. Material disclosures

To meet transparency standards and fulfill your disclosure duties, you need to address two discrete but related streams of information.

- (a) Information relevant to the contract including all information that could affect the supplier's decision to bid or the supplier's bid price; and
- (b) The evaluation rules that will apply to the competition, including the threshold eligibility requirements for supplier screening and the scoring criteria for supplier ranking.

### 4. Eligibility requirements

Assessing supplier compliance can attract legal challenge. You need to draft clear eligibility

requirements that lend themselves to transparent and defensible evaluation decisions. Since the duty to reject noncompliant bidders typically applies to a tendering process, you should limit your eligibility requirements to essential minimum standards.

### 5. Ranking and selection criteria

You need to ensure the thorough disclosure of bidder ranking and selection criteria. These transparency principles are a cornerstone of the open procurement process. They prohibit the use of hidden evaluation criteria and call for the disclosure of the following information:

- the pricing structures, volume estimates and scoring formulas that will be relied upon to calculate the total bid price;

**nominations close  
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- a clear indication of whether supplier ranking will be based on the “lowest bid” rule or on criteria that combine price and non-price factors; and
- all of the scored criteria that will be used to evaluate bids, including the methods of evaluating and weighting those criteria.

#### 6. The pricing form

Given the core significance of price to the procurement process, you should integrate pricing into your procurement documents in a coherent and thorough fashion so that the evaluation of price is clearly connected to the required goods and services and to how payments will be made under the contract.

#### 7. The legal agreement

The proper final assembly of a procurement document requires the vertical integration of the

statement of requirements and the pricing structure with the terms and conditions of the legal agreement. Purchasing institutions should ensure that they properly integrate all of the document components together with a legal agreement that incorporates the business requirements and payment terms of the contract.

#### Meeting the challenge

The high stakes challenges of the modern procurement era require you to meet the twin goals of accelerating deadlines and rising due diligence standards. The seven stages of precision drafting should serve as your reference points and help you keep your projects focused and on track as you face these mounting challenges. 

*The high stakes challenges of the modern procurement era require you to meet the twin goals of accelerating deadlines and rising due diligence standards*

This column provided by Paul Emanuelli is excerpted from the Preface of his new textbook *The Laws of Precision Drafting: A Handbook for Tenders and RFPs*. Paul can be reached at [paul.emanuelli@procurementoffice.ca](mailto:paul.emanuelli@procurementoffice.ca).

## GUESS WHAT?

The Material Management Institute of Canada has changed its name to



Canadian Institute for Procurement and Material Management

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June 2009

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