

Purchasing professional consulting

Part I: The necessary evil

by Steve Bauld and Kevin McGuinness

All governments periodically retain outside lawyers, accountants, engineers and other professional consultants as independent contractors – all being professional services. These professional consultants play an important role in facilitating municipal operations and in the delivery of municipal services.

Many municipalities have no choice but to purchase professional services on an as needed basis, but this presents all the risks entailed in purchasing any other service:

- identification and measurement of the need for particular services;
- whether the best combination of services is being provided;
- comparing the cost of what are often radically different forms of service offerings; and
- monitoring the work done.

Even the largest municipality will occasionally bring in specialized help, but the appropriate measures that a municipality needs to take to mitigate the risks are anything but self-evident.

Professionals study years to become expert in specialized disciplines, the very nature of which makes it difficult for a purchaser to evaluate the work being done and to compare the range of services and prices offered by different professional consultants. Many municipal councils complain that they are unable to keep track of the number of consultants being retained, or the aggregate amount of expenditure on consultants and they say that it is often difficult to understand the role the consultants played or

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the quality of the advice provided. As well, government consultancy arrangements can be difficult to justify to a suspicious electorate. When a citizen feels that too high a price was paid for the perceived benefit, it is likely that the elected officials will be called to account.

One of the most basic concerns is determining when one should hire professional

advisors. An old joke describes a consultant as a person who borrows your watch in order to tell you the time. While dated, this joke raises the question of whether consultants provide value for money. Certainly they often do or their services would not be used. A few words of constructive advice from the right consultant can save millions, or can lead to a vast improvement in the value derived from any expenditure. For example, when Cedar Rapids needed risk management advice in

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relation to flood claims, it paid a consultant \$450 per hour to review recovery contracts and make sure the city got as much federal money as was available. At a time when many city residents had lost their homes and businesses the contract was controversial. However, the city argued that this was good value for money, because the consultant had probably brought in an extra \$4 million in recovery funding.

In view of the costs and risks, many governments have begun a process of pre-retainer review to confirm that the required expertise is not available internally and that the prospective contract offers sufficient anticipated value gain to justify the level of anticipated expenditure. Other relevant considerations may include ensuring that the consultancy process is not being used to avoid making potentially

controversial decisions in-house and to confirm that the terms of the proposed consultancy arrangement have not been artificially structured so as to avoid any restrictions applicable to non-competitive contract awards.

As the customer, it is important that you know what you are trying to achieve. At times, this may be difficult to define, making it equally difficult to draw up suitable specifications and evaluation criteria for the professional services contract. For example, problems can arise in relation to:

1. Deciding when professional advice is needed. For a government, the availability or non-availability of capital cost allowance, or liability to GST, can have significant implications regarding the viability of different contract options. For example, often the need for professional tax advice does not become evident until after the transaction concerned is closed, and then it is too late. Non-lawyers often do not perceive that a transaction may give rise to legal problems until it is impossible to avoid those problems.

2. Defining the scale and scope of the service required. It is important that the customer's specifications for service delivery and other expectations be set out in clear language, however, the specialized nature of specific services is often unknown to the layperson, and it may be difficult for them to communicate that technical expertise in writing. For instance, while many legal firms have expertise in environmental law, far fewer have

expertise in federal environmental law and even fewer have extensive experience in the judicial review of federal environmental administrative decisions before the Federal Court. And, few clients sufficiently understand of environmental law to even know whether they need such expertise.

3. One-stop shops. Since the need for professional services often cannot be identified in advance, many municipalities retain a firm that offers “full service,” – a one-stop shop. However, many types of professional practice have little application in the municipal sector, and many “boutique” firms offer much better services in their limited fields of business.

4. Identifying a firm that is capable of meeting your special needs, particularly for legal services. Law firms do not often

have the experience of working within the unique environment of government. Many highly experienced private sector lawyers do not know that the indoor management rule does not apply to municipalities. Almost all municipal decision making must be carried out in public meetings and improper municipal decisions are open to attack in ratepayer actions. These features of municipal practice compromise the ability of a lawyer to service a municipal client.

Obviously, each of these considerations complicates both the setting of specifications for an RFP for consultancy services, as well as the determination of a suitable method of evaluating any bids received. (Part II will appear in *Summit*, March/April 2009.) 

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