



**PROCUREMENT, CONTRACTING AND ADVERTISING MANAGEMENT  
IN THE FEDERAL GOVERNMENT: LATEST DEVELOPMENTS**

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## **PROCUREMENT, CONTRACTING AND ADVERTISING MANAGEMENT IN THE FEDERAL GOVERNMENT: LATEST DEVELOPMENTS**

### **INTRODUCTION**

In the wake of the observations made by the Office of the Auditor General and the sponsorship scandal, many changes have been made to the federal government's procurement process and contracting rules in order to strengthen oversight, transparency and accountability. This document addresses these issues and consists of two parts. The first part highlights the reforms undertaken by the federal government with regard to the procurement of goods and services, and the recommendations of a task force that was established to study the subject. The second part describes progress made in the management of federal government advertising programs and sets out the main recommendations of the Gomery Commission on the subject. Both parts include a summary of the commitments on these issues made by the Conservative Party in the recent election campaign.

### **REFORM OF PROCUREMENT AND CONTRACTING**

#### **A. Current Situation**

The Government of Canada buys approximately \$14 billion worth of goods and services every year from thousands of suppliers. Among the 85 departments, agencies, Crown corporations and Special Operating Agencies, Public Works and Government Services Canada (PWGSC) is the government's largest purchasing organization, averaging 60,000 contracts totalling \$10 billion annually. While PWGSC buys goods for most federal departments, the departments themselves buy most of the services they need.

On 12 December 2003, the Prime Minister named the Honourable Walt Lastewka as Parliamentary Secretary to the Minister of Public Works and Government Services, with

special emphasis on procurement review. The Deputy Minister of PWGSC and the Assistant Deputy Minister of PWGSC's Acquisitions Branch established a Task Force to support Mr. Lastewka in his mandate. The Task Force was made up of staff from PWGSC, the Department of Justice, the Department of National Defence and the Treasury Board Secretariat (TBS), as well as a private-sector consultant. Task Force members had a broad background in procurement and significant experience in the public sector, and they were supported by an interdepartmental committee of Directors General. The Task Force was established at the same time as the Expenditure Review Committee, a new Cabinet committee responsible for reviewing all federal expenditures.

The federal government is committed to fundamental reforms in the way it procures goods and services. It is seeking a government-wide procurement system that is based on *integrity, accountability and transparency*, and that is *faster, simpler, and reduces product and process costs*. Significant savings can be achieved by eliminating overlap and duplication across government, and investing in a system that creates a competitive environment that is fair for all involved. These savings can then be reallocated to support the priorities that matter most to Canadians. The final report of the Task Force on the Government-wide Review of Procurement was tabled in January 2005; its main recommendations are presented in the following section of this paper.

In the interim, the Liberal government announced and implemented a series of measures:

1. On 23 March 2004, the government announced a new policy on the mandatory publication of contracts over \$10,000. The TBS Web site provides information on contracts issued by or on behalf of the TBS. Since 31 October 2004, the Web site has been updated every three months to include information on new contracts awarded.
2. On 24 October 2005, the President of the Treasury Board announced an investment of up to \$35 million per year for a new "learning and development initiative" for public servants, which includes training of specialists in the fields of finance, audit, and procurement.
3. On 25 October 2005, the President of the Treasury Board released a document entitled *Management in the Government of Canada: A Commitment to Continuous Improvement*, in which he unveiled a series of management reforms intended to improve management practices and enhance accountability.

## **B. Recommendations of the Task Force on the Government-wide Review of Procurement**

Mr. Lastewka's Task Force made numerous recommendations aimed at clarifying the government-wide objectives of procurement, eliminating overlap and duplication across the government, and allocating and managing sufficient resources to ensure effective service delivery *across government*. Key recommendations are presented below.<sup>(1)</sup>

***Management of Procurement:*** The government should adopt a corporate approach to managing procurement, based on the best overall value for Canadians. Commodity plans, or appropriate portions thereof, should be made available as public documents to ensure transparency.

***Dispute and Redress Mechanisms:*** The government should consider reviewing the existing dispute resolution mechanism in light of the findings included in the Task Force's report. There should be a robust government-wide approach to contract management, supplier performance and dispute resolution. For both contract award disputes and contract performance disputes, the procurement officer should remain the first point of contact to resolve disputes. For disputes over contract performance, any additional measure to address particular circumstance should be reflected in the commodity plan and contract.

***Procurement Responsibilities:*** Where government-wide procurement tools and systems are available, their use should be mandatory and subject to continuous improvement. Requirements that cannot be met through these tools and systems should be handled in accordance with the applicable commodity management plan. Authority to use the tools should be widely delegated to departments, and within the tools, the only limitations on purchasing should be those associated with spending authority.

***Commodity Management:*** The government should manage its procurement of all goods, services and construction based on government-wide, commodity management planning, taking into consideration the total cost of ownership and the risks associated with any given commodity.

***Sourcing:*** The government should recognize that open competition is not necessarily the only measure of value, and, therefore, it should be replaced as *the* key performance measure. Each commodity plan should demonstrate which sourcing mechanism will achieve best value for money in procurement and adherence to the trade agreements: open competition; competition between qualified suppliers; or non-competitive or sole-source contracting.

***Procurement Tools:*** PWGSC should develop appropriate corporate procurement tools that fully reflect value for money and meet the needs of departments. PWGSC should ensure that these tools are readily accessible and easy to use. Procurement terminology should definitely be standardized for use on a government-wide basis. Standardized plain language documents should be developed to contribute to the simplification and efficiency of the contracting process.

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(1) The following text is adapted from the Parliamentary Secretary's Task Force: Government-wide Review of Procurement, *Final Report*, January 2005, [http://www.pwgsc.gc.ca/prtf/text/final\\_report-e.pdf](http://www.pwgsc.gc.ca/prtf/text/final_report-e.pdf).

**Working With Suppliers:** To speed up procurement, and where appropriate, a pre-qualification process for suppliers should be created. Pre-qualification criteria should include performance history, professional and industry standards, business management systems and/or other applicable core requirements. Suppliers' performance should have a bearing on future business. PWGSC should develop common performance standards and measures for departments to use when evaluating suppliers during and after the selection process and the life of the contract. Resulting performance data, collected by departments, should be reported to PWGSC in a timely manner. Performance incentives, value engineering (i.e. sharing of innovation costs and savings), business guarantees, information sharing and other such approaches should be included in commodity plans and used to develop more effective relationships. In developing performance measures, PWGSC should develop a methodology that will reward superior performance and penalize poor performance.

**Human Resources:** All individuals who exercise procurement authority should have appropriate procurement training reflecting the qualifications needed to make informed decisions related to procurement.

A number of these recommendations have been implemented, including the development of a federal procurement policy based on government-wide product management, the mandatory use of existing procurement tools throughout government, where these are available, and human resources training in accordance with the new operational model.

### **C. The Conservative Party's Election Platform**

In its platform for the recent election campaign, the Conservative Party of Canada promised to clean up the procurement of federal government contracts. It stated that it would:

- Review and amend all contracting rules to make the government's procurement process free from political interference.
- Appoint a Procurement Auditor to ensure that all procurements are fair and transparent, and to address complaints from vendors.
- Permit smaller vendors and vendors outside of the National Capital Region to receive due consideration for government contracts.<sup>(2)</sup>

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(2) Conservative Party of Canada, *Stand Up for Canada – Conservative Party of Canada Federal Election Platform 2006*, January 2006, p. 10, <http://www.conservative.ca/media/20060113-Platform.pdf>.

## REFORM OF ADVERTISING MANAGEMENT

### A. Current Situation

In 2002, the government made far-reaching changes to its advertising policies and procedures. It subsequently responded to the November 2003 report of the Auditor General<sup>(3)</sup> – which led to the creation of the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the Gomery Commission) – by adopting a series of measures intended to improve the situation:<sup>(4)</sup>

1. An increase in the number of suppliers for advertising, the number of opportunities for firms to compete and the variety of procurement methods;
2. Payments based on hourly remuneration, not commission-based remuneration (the source of frequent abuses in the past); other methods of payment – such as retainers and performance-based methods – may be considered when warranted;
3. Selection of a new Agency of Record through a competitive Request for Proposals (RFP) process;
4. Implementation of an amended requirement of 80% Canadian content;
5. Ongoing strengthening of internal capacity; and
6. Issuance of an annual report on government advertising activities, to increase transparency.

These new policies and procedures have been accompanied by a number of structural and administrative changes:

1. The elimination of Appendix Q of the Treasury Board Regulations on advertising, together with the integration of advertising into the standard contracting policy which came into effect on 1 January 2003;
2. The strengthening of management oversight mechanisms through:
  - the centralization of decision-making on advertising in the Strategic Communications Planning section of the Privy Council Office; and

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(3) Auditor General of Canada, *Government-wide Audit of Sponsorship, Advertising, and Public Opinion Research*, November 2003, [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/03menu\\_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/03menu_e.html).

(4) The following text is based on the Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), Phase 2 report, *Restoring Accountability: Recommendations*, February 2006, Chapter 9, p. 159ff.



- the establishment of two new organizations in PWGSC to manage and coordinate advertising projects: the Public Opinion Research and Advertising Coordination Directorate, and the Communication Procurement Directorate.

## **B. Key Recommendations of the Gomery Commission to Complete the Reforms Already Under Way**

The Gomery Commission's first recommendation<sup>(5)</sup> on government advertising is that the current Government of Canada definition of "advertising" be amended to conform to accepted advertising industry standards, and be included in the government Communications Policy and other related documents.

The recent changes announced by the President of the Treasury Board include enhancements to the audit function that are intended to strengthen these oversight mechanisms. In the Commission's opinion, this system appears to be comprehensive and may well prove to be a success. However, the Commission also suggests that the government consider further measures, including:

- an instruction by the Office of the Comptroller General to each department and agency to conduct an annual audit of departmental advertising programs and processes, foreseeing that, in due course, it will be possible to make an annual decision by modifying or eliminating this requirement;
- a comprehensive audit of government advertising initiatives by the Office of the Auditor General in either fiscal year 2006/07 or 2007/08, to verify that the new processes and policies in place are ensuring fairness, value for money, effectiveness, training and, above all, the elimination of political intervention in the management and administration of advertising activities; and
- independent assessments of the views of government departments and agencies, advertising firms and the public on the efficiency and effectiveness of the new advertising management systems and policies, and on any other impact or consequence.<sup>(6)</sup>

Finally, the federal government should promote competent management of advertising and sponsorship activities through training and certification.

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(5) *Ibid.*, p. 161; this recommendation is No. 14 in the report.

(6) *Ibid.*, pp. 163-164.

### **C. The Conservative Party's Election Platform**

In the recent election campaign, the Conservative Party of Canada promised to clean up government advertising and contracting activities, to ensure that they are not used for partisan purposes by government, or for the private benefit of contract recipients. The Party stated that it would:

- Ensure that all government public opinion research is automatically published within six months of the completion of the project, and prohibit verbal-only reports.
- Ensure that an independent review is conducted of government public opinion research practices discussed in Chapter 5 of the Auditor General's November 2003 report to determine whether further action, such as a judicial inquiry, is required.
- Open up the bidding process for government advertising and public opinion contracts to prevent insider firms from monopolizing government business.<sup>(7)</sup>

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(7) Conservative Party of Canada (2006), p. 10.

## APPENDIX

### PROCUREMENT: GOVERNMENT-WIDE RESPONSIBILITIES AT A GLANCE<sup>(1)</sup>

#### Governing Legislation

- Federal procurement is carried out within a framework of more than 15 Acts of Parliament and more than 35 different policies.

#### Treasury Board

- Sets government-wide procurement policies.
- Sets limits on the project and contract approval authorities of ministers and approves projects and contracts above those limits.
- Ensures government-wide overview.

#### Operating Departments and Agencies

- Deliver programs and services for Canadians.
- Develop operational requirements for goods and services.
- Contract for goods (when delegated) and for services, within ministerial limits.
- Use PWGSC services for other procurements.

#### International Trade/Industry Canada

- Negotiate government procurement provisions as part of trade agreements.

#### Program Departments

- Identify socio-economic programs/objectives that could be supported by procurement.
- Carry out program effectiveness evaluations.

#### Justice

- Provides legal advice on procurement transactions and issues.

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(1) Public Works and Government Services Canada, Fact Sheet, *Procurement: Government-Wide Responsibilities at a Glance*, <http://www.pwgsc.gc.ca/prtf/text/factsheets/Procurement.pdf>.

### **Canadian International Trade Tribunal**

- Reviews complaints about individual government procurements for compliance with trade agreements.
- Issues findings, recommends remedial actions; may award costs and other compensation.

### **Auditor General**

- Reviews government operations to ensure compliance with policy and value for money.
- Recommends remedial action to the government.

### **PWGSC as a Common Service Organization (CSO)**

- Carries out procurement for operating departments and agencies:
  - mandatory for goods (unless delegated);
  - optional for services and construction.
- Delegates goods procurement authority to departments.
- Develops government-wide methods of supply.

In carrying out procurement for operating departments and agencies, the CSO through collaboration, is normally responsible for determining how services will be provided to meet the needs of its customers. The operating departments and agencies are generally responsible for determining what they need, where and when. Procurement, which includes market research, product planning and the soliciting, evaluating, selecting, negotiating, issuing, and administering of contracts, is the responsibility of the CSO which must ensure contracts are successfully executed in accordance with the agreed terms of time, cost and performance.