Governance of public procurement:
Case of Canada

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November 29th 2016
Outline

• Procurement in Canada
• Policy and legal framework
• Key organizations in Canadian federal procurement
• Oversight bodies and mechanisms
• Procurement process and tools
• Key policy challenges, changes, initiatives
Procurement in Canada

• Procurement in Canada is de-centralized: in addition to the federal government, provincial governments and local public sector organizations do procurement within own areas of responsibility

• Nonetheless, the federal government remains a leading procurer of goods and services in Canada

• Core principles underpinning procurement: fair, open, transparent

• Governed by by a number of acts, international and national trade agreements, as well as policies, directives, and guidelines
Procurement in Canada – federal level

- Annual value of Government of Canada procurement contracts is $23 billion (avg over 3 FY):
  - $17.86 billion (78%) by PSPC
  - $5.14 billion (22%) by federal departments and agencies

- While PSPC manages the most procurement by value, the numbers are reversed when looking at the number of transactions:
  - Approx. 80% by federal departments and agencies and only 20% by PSPC.
Policy and Legal Framework

- There are many statutes, regulations, agreements, policies, directives, procedures and guidelines that govern contracting activities. To name a few:

  - Financial Administration Act
  - Government Contracts Regulations
  - Department of Public Works and Government Services Act and Defence Production Act
  - Treasury Board Contracting Policy
  - Others: Trade agreements, Access to Information Act, Code of Conduct for Procurement, Competition Act, Conflict of Interest Act, Criminal Code etc…
Procurement - key departments

- Public Services and Procurement Canada (PSPC) is the procurement arm of the federal government and has exclusive authority for the procurement of goods
  - Handles almost all high value/complex contracting of goods and services, including defence supplies, construction and projects
  - Establishes standing offers/framework agreements that other departments and agencies can use to buy for themselves
- Other departments and agencies: contract within limited legal and delegated authorities (standard: goods with a value of less than $25,000, services up to $2,000,000)
- Shared Services Canada: major IM/IT services, networking and end user devices
- Treasury Board Secretariat (TBS): largely responsible for establishing the regulatory and policy environment for federal procurement.
- Department of Justice: contracts for legal services
- Global Affairs Canada: contracting in support of missions overseas
Oversight and recourse mechanisms

• Informal recourse:
  – Dialogue between suppliers and contracting officials

• Formal recourse:
  – Procurement Ombudsman
  – Canadian International Trade Tribunal
  – Federal and Provincial Courts

• Oversight:
  – Internal audit
  – Auditor General of Canada
  – Competition Bureau
  – Public Sector Integrity Commissioner
LEGISLATIVE/REGULATORY FRAMEWORK FOR FEDERAL GOVERNMENT CONTRACTING

Statutes & Regulations (procurement related)
- Financial Administration Act
- Department of Public Works and Government Services Act
- Federal Accountability Act
- Defence Production Act

GOVERNMENT CONTRACTS REGULATIONS***

Agreements (enacted)
- Agreement on Internal Trade (AIT)
- North American Free Trade Agreement (NAFTA)
- World Trade Organization Agreement on Government Procurement (WTO-AGP)**

COMPREHENSIVE LAND CLAIMS AGREEMENTS

Policies, Directives, Procedures & Guidelines
- TB CONTRACTING POLICY
- TB PROCUREMENT REVIEW POLICY
- TB CONTRACTS DIRECTIVE
- TB COMMON SERVICES POLICY
- CODE OF CONDUCT FOR PROCUREMENT
- OFFICE OF THE PROCUREMENT OMBUDSMAN
- FEDERAL COURT

Challenge Process
- CANADIAN INTERNATIONAL TRADE TRIBUNAL

**See Chapter 1 of the Supply Manual for complete list of Acts and Agreements.
** Procedural requirements of the other international trade agreements will be fulfilled following compliance to the procedural requirements of NAFTA and the WTO-AGP.

*** (Section 3 of the GCRs – Application)
(Section 6 of the GCRs – Justification for non-competitive procurement)
- Emergency Requirements
- Low dollar value requirements (< $25K, $100K Architectural and Engineering, etc.)
- Not in the public interest to compete
- Only one firm/person is capable of performing the contract
Methods of Procurement

• Individual contracts:
  – Range from low dollar value up to most complex
  – PSPC manages most high value goods, services and constructions procurement

• PSPC issues a broad range of standing offers and supply arrangements for use by other federal departments to manage their own purchasing
  – SOs: Ts&Cs and pricing preset
  – SAs: high-level qualifications, generally requirements are competed amongst eligible suppliers

• Policy decision that for top 10 most common commodities, depts must use available standing offers and supply arrangements (eg. Office supplies, furniture, vehicles, fuels, IM/IT etc.)

• In 2013, SOs and SAs were used to purchase 25% of total goods and services procured by the Government of Canada (GC).
PROCUREMENT PROCESS

1. REQUIREMENT DEFINITION
- Security clauses (SRCL) consideration, if required
- Aboriginal consultation and accommodation
- Determine if PSAB set-aside
- Sole-source justification as applicable
- National Security Exception (NSE) as applicable
- Define the requirement in its entirety (including SOW/SOR as required)
- Translate documentation as applicable
- Obtain project/internal approval
- Certify the availability of funds
- Send requisition to PWGSC

2. PROCUREMENT STRATEGY
- Source from existing procurement instruments if available
- Regulations, CLCA’s, trade agreements, policies, etc.
- Competitive vs. non-competitive
- Exceptions being invoked
- PRC/SPAC as required
- Assess need for fairness monitor
- Decide on method of supply
- Financial security considerations
- Evaluation criteria & methodology
- Selection methodology
- Procurement Risk Assessment
- Approval of Procurement Plan or CPAA*

3. SOLICITATION PROCESS
- Prepare contract documentation using approved contract templates and clauses
- Official languages requirements
- As applicable, pre-solicitation request to suppliers (LOU/RFI/Draft RFP, etc.) followed by issuance of solicitation document
- Tender Solicitation: NPP/ACAN, Electronic/Not Advertised
- Solicitation Process can be a one – or multi-stage process
- Solicitation Document types: RFP, ITT, RFQ, T-Buy, RFSO, RFSA

4. EVALUATION/NEGOTIATION
- Technical evaluation (Client)
- Financial evaluation (PWGSC)
- Apply selection methodology (PWGSC)
- Proof of Proposal (POP)/Demo testing as required
- Price support, negotiations
- Verifications – Vendor Performance Corrective Measure Policy (VPCMP), Integrity Provisions, Security Clearance, etc.

5. CONTRACT APPROVAL
- Additional reviews as and when appropriate
- Peer review
- Contract
- Legal
- Quality
- Cost Analyst
- Assurance
- Risk
- Other
- Perform risk assessment (if identified risks have changed)
- Obtain approval for contract award if advance approval was not obtained or if requirement changed significantly from what was originally approved

6. CONTRACT AWARD
- Contract award notice (CAN) on GETS
- Go-Ahead Letter as required
- Reporting as required
- Regret letters
- Unsolicited bidders may then request debriefings
- Provide recourse mechanisms if requested

7. CONTRACT ADMINISTRATION
- Progress of work
- Contract progress
- Contractor’s performance
- Resolve any disputes
- Contract audit if required
- Amend contract if required
- Exercise options as required
- Task Authorizations as required
- Call-ups against Standing Offers as required
- Termination if required

8. CONTRACT PAYMENT
- Acceptance of deliverables (Client)
- Ensure contractual terms and conditions are met (Shared)
- Ensure payment terms are met (Shared)
- Exercise payment authority (Client)

9. CONTRACT CLOSE-OUT
- Ensure all contractual requirements are met and client received/accepted all deliverables under the contract
- Ensure all payments to the contractor and settlement of claims have been made
- Ensure no outstanding action is required
- Ensure all reporting requirements have been met
- Ensure all required documentation is on file
- Finalization of cost (amendment) if required
- Review any lessons learned including any audit findings

PWGSC / AB / Acquisitions Program Policy Directorate / C. Dubreuilh Mellon
Last updated: May 2, 2016
Buyandsell.gc.ca is the authoritative site for government procurement information, including:

- How to register as a supplier;
- Procurement policies;
- Past and current procurement info;
- Procurement contacts in departments and agencies;
- GoC procurement initiatives, programs; and events

Suppliers do not need to register to browse or search data and information.
Key trends, policy challenges, changes and initiatives in recent years.
Where to start..

- Regulatory and policy framework
- Trade agreements and treaties
- Modernization and simplification of practices
- Desire for standardization, horizontality and efficiencies
- Integrity Framework
- Vendor Performance
- E-procurement
- Open government
- Secondary policy objectives:
  - Innovation, small business, green, ethical buying etc.
- Procurement capacity
Defence procurement

- Defence Procurement Strategy developed and implemented to improve the performance and manage of major defence acquisitions
- New governance model to ensure a more robust structure in to manage these challenges
- Aims to achieve three broad objectives:
  - Timely delivery and sustainment of the right equipment for the Canadian Armed Forces;
  - Fair and transparent procurement processes that result in value-for-money; and
  - Leveraging economic benefits for Canadians
- Three primary Ministers: National Defence; Innovation, Science and Economic Development and Public Services and Procurement Canada
Governance – Distinct Roles and Responsibilities

Cabinet Committee on Defence Procurement
- Considers and coordinates major acquisitions of defence equipment

Deputy Minister Governance Committee (DMGC)
- Sets strategic direction / priorities on key issues / procurements
- Monitors performance of priority projects and the system overall
- Makes strategic decisions on select list of priority projects/procurements
- Develops common advice in support of Ministers and Cabinet, as required

Assistant Deputy Minister Committee (ADMC)
- Oversees implementation of direction/priorities
- Shapes strategic plans and formulates advice
- Makes broader set of decisions on select list of projects/procurements
- Ensures coordinated, whole-of-government approach
- Manages issue resolution process

DG- and Director-level governance
- For the majority of procurements (i.e. those not directly under ADMC/DMGC oversight), DG and Director level committees are responsible for making key procurement decisions
Questions ?
Contact

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