



Office of the Procurement
Ombudsman

Bureau de l'ombudsman
de l'approvisionnement

OFFICE OF THE PROCUREMENT OMBUDSMAN



CHAPTER 5

PROCUREMENT PRACTICES REVIEW

CORCAN

PROCUREMENT ALLEGATIONS

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Executive summary

The Office of the Procurement Ombudsman (OPO) was contacted in May of 2008 by a supplier who made several allegations about irregularities of contract award and contract administration in the CORCAN construction services program at Correctional Services Canada (CSC).

A special operating agency (SOA) within CSC, CORCAN is mandated to provide employment training and employability skills to offenders in federal correctional institutions in support of Government of Canada social policy.

One of CORCAN's five business lines is CORCAN Construction, which has operations throughout the country, including Kingston, Ontario, the site to which the allegations pertain. The total value of CORCAN Construction expenditures in Ontario for 2007-2008 was \$3.1 million.

CORCAN Construction employees and contract staff carry out and manage/oversee the various CORCAN Construction projects and the related training/employability elements. Contractors engaged by CORCAN Construction are required to supply skilled labour for offender training. In consideration for the supply of skilled construction labourers by the contractor, CORCAN pays the contractor at prescribed rates for construction trades plus a training charge. The construction projects provide inmates who assist in this work with training in order that they might acquire marketable skills to improve their future employment prospects.

The allegations concerned procurement issues related to the contractual arrangements put in place at the site in Ontario for the provision of construction services and offender training. These allegations involved:

- the misuse of supply arrangements (SAs) issued for the period of September 2006 to March 2008 (these SAs had a value of approximately \$1.3 million for 2007-2008);
- the solicitation and awarding of a business-to-business (B2B) alliance agreement for March 1, 2008 to March 31, 2009 (valued at \$2.3 million);
- the management weaknesses related to the use of the B2B agreement; and
- a potential conflict of interest in the operations and management of the B2B agreement.

The Procurement Ombudsman Regulations provide the Ombudsman with authority to review the procurement practices of departments in order to assess their fairness, openness and transparency and make recommendations for the improvement of those practices.

After making preliminary inquiries we decided to carry out a review of CORCAN contracting practices to examine the systems and practices related to the allegations.

The matter was then brought to the attention of CSC management, which expressed great concern about the allegations. It was agreed that CSC would engage a private sector firm to review the allegations and report its findings. OPO and CSC officials agreed to the following:

- The scope of the work and the review methodology would have to satisfy the needs of both CSC and OPO;
- CSC would present the report and related action plan to its audit committee;
- OPO would review the report and the supporting documentation it considered necessary; and
- OPO would disclose the significant observations in its annual report.

CSC commissioned a private firm to carry out the review, which was done in three phases. The report on the work done in the initial phase recommended three of the nine allegations for further review and determined the other six to be unfounded. Of these three, two relate to possible misuse of SAs, and one relates to the solicitation and implementation of the B2B agreement.

The second phase further examined the allegations and confirmed the misuse of SAs, issues with the solicitation and award process for the B2B agreement, problems with the use of the B2B agreement and a potential conflict of interest in the implementation of the B2B agreement.

The third phase reviewed the administration of the B2B agreement, and the report included recommendations for improving controls over the management of projects that would be conducted under such arrangements.

Based on our review of the file and the reports, we are of the opinion that there were significant flaws in the procurement practices, such as the:

- short bid solicitation period (three days – December 20–22, 2007);
- lack of an evaluation methodology in the bid solicitation;
- lack of appropriate controls to manage a known conflict of interest situation; and
- lack of required documentation in procurement files.

It also appears that the financial and contracting authorities were exceeded.

As a result, in our opinion, for the transactions under review, the fairness, openness and transparency of the contract award and administration processes have been seriously compromised.

We note that management acted in a responsible and prudent manner when OPO brought the matter to its attention.

Each allegation and review finding has been analyzed and addressed in a very detailed management action plan. The entire matter has been reported to the highest level and has been discussed by the Audit Committee. The action plan itemizes the policy, structural and operational changes that need to be made to prevent future breakdowns of internal control. We have been informed that CSC has dealt with the related Human Resources issues pertaining to potential conflict of interest.

From our review of the work done by the firm and the management action plan prepared by CSC management to address the review findings, we are satisfied that CSC management has adequately dealt with the specific allegations.

CSC has conducted further work and is satisfied that the issues arose from a breakdown in the system of internal controls and were administrative in nature and that there was no unlawful activity. CSC is also satisfied that no recovery action is required.

CORCAN had managed the B2B alliance agreement based upon the premise that it was not subject to the *Government Contracts Regulations* (GCRs) or the Treasury Board (TB) Contracting Policy. Following this review, CSC informed us of their conclusion that the GCRs and TB Contracting Policy do apply to this type of agreement, where goods and/or services are procured by CSC.

OPO recommendations

- CSC review its other CORCAN construction contracts to ensure that a systemic problem affecting fairness, openness and transparency in the procurement process does not exist and that no delegated financial or procurement authorities have been breached;
- CSC assess the need for training in the area of procurement, including construction services, and devise an appropriate action plan;
- CSC review, in consultation with the Public Works and Government Services Canada and the Treasury Board Secretariat, the appropriateness and legality of the B2B procurement method, including issues pertaining to the application of the Government Contracts Regulations, TB policy, and delegated departmental authorities.

CSC agrees with the recommendations in this report. The detailed actions are included in the body of the report.

Detailed report

Background

Context

5.1 The Office of the Procurement Ombudsman (OPO) was contacted in May of 2008 by a supplier who made several allegations about irregularities of the contract award and contract administration in the CORCAN construction services program at Correctional Services Canada (CSC).

5.2 CORCAN is a Special Operating Agency within CSC that is mandated to provide employment training and employability skills to offenders in federal correctional institutions in support of Government of Canada social policy.

5.3 One of CORCAN's five business lines is CORCAN Construction, which has operations throughout the country including Kingston, Ontario, the site to which the allegations pertain. The total value of construction expenditures in Ontario for 2007-2008 was \$3.1 million, of which approximately \$1.3 million related to the supply arrangements referred to in the allegations.

5.4 CORCAN Construction employees and contract staff are engaged to complete and manage/oversee various CORCAN Construction projects and the related training/employability elements. The construction projects provide training for inmates who assist in this work, which allows them to acquire marketable skills to improve their opportunities for obtaining future employment.

5.5 Most of the allegations dealt with procurement issues related to the contractual arrangements put in place at the site in Ontario for the provision of construction services and offender training. These allegations involved:

- the misuse of supply arrangements issued for the period of September 2006 to March 2008;
- the solicitation and awarding of a business-to-business (B2B) alliance agreement for March 1, 2008 to March 31, 2009 (valued at \$2.3 million);
- the management weaknesses related to the use of the B2B agreement; and
- the potential conflict of interest in the operations and management of the B2B agreement.

Definitions

5.6 Supply arrangements (SAs) are non-binding agreements which pre-establish the terms and conditions for future contracts between the Federal Government and suppliers to provide, in this case, construction services to CORCAN on an "as required" basis. There were over thirty suppliers listed on the SAs to provide services in specified

construction trades. CORCAN fulfills its specific needs by awarding subsequent contracts/call-ups against these SAs.

5.7 One other method used by CORCAN to obtain the construction services was called a business-to-business (B2B) alliance agreement. CSC officials described this method as a type of arrangement between CORCAN and a legal entity for the provision of inmate labour or inmate made products to the other entity. In the B2B in this case, contractors engaged by CORCAN Construction are required to supply skilled labour for offender training. In consideration for the supply of skilled construction labourers provided by the contractor, CORCAN pays the contractor at prescribed rates for construction trades plus a training and administration charge.

Decision to carry out a review

5.8 The Procurement Ombudsman Regulations provide the Ombudsman with authority to review the procurement practices of departments in order to assess their fairness, openness and transparency and make recommendations for the improvement of those practices.

5.9 After making preliminary inquiries the OPO decided to carry out a review of CORCAN contracting practices as the allegations suggested real potential for serious systemic issues.

5.10 The matter was then brought to the attention of CSC. At this point it was agreed that CSC would engage a private firm to review the allegations and report its findings. CSC officials agreed to the following:

- The scope of the work and the review methodology would have to satisfy the needs of both CSC and OPO;
- CSC would present the report and related action plan to its audit committee;
- OPO would review the report and the supporting documentation it considered necessary; and
- OPO would disclose the significant observations in its annual report.

Objectives

5.11 We wanted to ensure that CSC:

- had taken sufficient steps to investigate the allegations; and
- if the allegations proved true, would undertake sufficient actions to prevent any such future irregularities.

5.12 CSC commissioned a firm to perform the review in three phases each of which yielded a report. We examined each of the reports and the supporting documentation, with our review efforts focused on substantiating the review findings that pertained to the allegations relating to procurement.

Review scope and period under review

5.13 The planned scope for our review was limited to the question of whether the review carried out by the private sector firm was of sufficient quality and depth to allow us to rely on its work. If we could rely on the firm's work, we would proceed to review the actions taken by CSC in order to assure ourselves that the actions taken were appropriate in the circumstances.

5.14 Although our scope was limited to the private firm's review and management action plans we also wanted assurance from CSC that the allegations were not systemic and that no laws had been broken.

5.15 The period covered by our review was considered to be the period addressed by the allegations, from September 2006 to November 2008.

Review criteria

5.16 Our review criteria deal with the sufficiency of the private firm's review and the appropriateness of the management action plan, namely:

- the review should be carried out by individuals with sufficient training and experience;
- the review work plan should have a clear scope, objectives, methodology and extent of testing;
- the review report should be substantiated by working papers that provide clear evidence of the reported findings;
- the management action plan should spell out the actions to be taken to address the findings, should assign responsibility as to who is to carry out the actions, and should set a target completion date for the action.

The firm's review

The firm's review phases

5.17 The firm's report of its work in the preliminary phase recommended three of the nine allegations for further review and determined the other six to be unfounded. The first two of the initial allegations relate to possible misuse of SAs, and the other one relates to the solicitation and implementation of the B2B agreement.

5.18 The second phase further examined the allegations and the report made recommendations on the proper method for awarding call-ups against SAs, and the solicitation and award process for the B2B agreement. It also assessed the use of the B2B agreement tool and looked at the issue of the potential conflict of interest in the implementation of the B2B agreement.

5.19 The third phase reviewed the administration of the B2B agreement and the report included recommendations for improving controls over the management of projects that

would be conducted under such an arrangement.

Focus of the firm's review

5.20 The scope of the review included reviewing documents provided by CORCAN referred to in the allegations. Key personnel were also interviewed. Based on the preliminary assessment, the review focused on the following:

- use of SAs and rotation of suppliers under the SAs for the period September 2006 to March 2008;
- the B2B agreement solicitation and award process;
- assessment of the use of the B2B agreement;
- the perceived conflict of interest in the implementation and operation of the B2B agreement; and
- with respect to the review of the B2B agreement with the Contractor:
 - acceptance of projects
 - project labour authorized to be performed
 - controls over the work performed and paid.

Findings and recommendations from the firm's review

Usage/rotation of call-ups under supply arrangements for September 2006 to March 2008.

5.21 **Finding.** Documentation did not exist for certain periods to demonstrate that CORCAN was selecting contractors as per terms of the supply arrangement.

5.22 Recommendation 1: The CEO of CORCAN should ensure that appropriate documentation is kept to support procurement processes.

Use of the business-to-business alliance agreement

5.23 Findings. The B2B agreement was awarded to a business owned by a relative of the CORCAN employee who was responsible for the day-to-day operations of CORCAN Construction. The CORCAN employee had declared up-front his potential conflict of interest and CORCAN had consultations with the CSC Legal Services and Values and Ethics Branch. Notwithstanding the declared conflict of interest, controls were not devised to mitigate the risks.

- 5.24 The Letter of Interest advertisement was in newspapers for an unusually short period of time, from December 20 – 22, 2007, just before the holiday season. There was also no method of bid evaluation contained in the Letter of Interest. In fact, the rating guide was not finalized until after the bids had been received. From the available documentation, it could not be confirmed when, how, or from whom the contractor's proposal was received.
- 5.25 **Recommendation 2:** The CEO of CORCAN should ensure that appropriate measures are implemented to ensure openness, fairness and transparency throughout the B2B solicitation and award process.
- 5.26 **Findings.** The CORCAN Governing Principles make reference to business arrangements with the private sector, but do not appear to contemplate the purchase of services from the business partner. Therefore, it is not clear whether B2B agreements apply to procurement of services. There does not appear to be a precedent for CORCAN having used a B2B agreement solely for acquiring services.
- 5.27 Also, the limit of CORCAN's financial authority to enter into B2B agreements is not clear. The agreement had a one year estimated cost of between \$1.6 million and \$3.2 million. From a contracting point of view, \$1.6 million exceeds CORCAN's \$400,000 authority limit.
- 5.28 **Recommendation 3:** The CEO of CORCAN, in collaboration with the Assistant Commissioner Corporate Services, should clearly define under what circumstances and under whose authority B2B agreements can be used to procure goods and/or services.
- 5.29 **Finding.** Despite a potential conflict of interest, CORCAN's Construction Manager was involved in the day-to-day management of the B2B agreement.
- 5.30 **Recommendation 4:** The CEO of CORCAN should take immediate action to ensure that appropriate measures are in place to address the perceived conflict of interest in the day-to-day management of the B2B agreement.

Administration of the business-to-business alliance agreement

5.31 The firm's review made six additional recommendations pertaining to other administrative weaknesses observed. The recommendations generally pertain to developing and implementing appropriate internal controls.

Departmental responses to the review

5.32 CSC agreed with all the recommendations resulting from the review. A management action plan to address the issues raised in the review was prepared by CSC and shared with the OPO. This action plan was approved by the CSC Audit Committee on January 20, 2009.

5.33 A report of progress against this management action plan was prepared as of March 31, 2009 and shared with the OPO.

OPO's conclusion

5.34 Based on our review of the specific file and the reports, we are of the opinion that the concepts and spirit of fairness, openness and transparency have been seriously compromised. However, we note that management has acted in a responsible and prudent manner when OPO brought the matter to their attention.

5.35 We observed that each allegation and review finding has been analyzed and addressed in a very detailed management action plan. The entire matter has been reported to the highest level and has been discussed by the Audit Committee. The action plan itemizes the policy, structural and operational changes that need to be made to prevent future breakdowns of internal control. We have been informed that CSC has dealt with the related Human Resources issues relating to the potential conflict of interest.

5.36 From our review of the work done by the firm and the management action plan prepared by CSC management to address the review findings, we are satisfied that CSC management has adequately dealt with the specific allegations.

5.37 CSC has conducted further work and is satisfied that the administrative issues were of a breakdown in the system of internal controls and that there was no unlawful activity. CSC is also satisfied that no recovery action is required.

5.38 CORCAN had managed B2B alliance agreement based on the premise it was not subject to Government Contracts Regulations (GCRs) or Treasury Board (TB) Contracting Policy. Following this review, CSC informed us that they now have concluded that the GCRs and TB Contracting policy do apply to this type of agreement for the procurement of goods and/or services.

OPO's recommendations

5.39 To obtain assurance from CSC that no systemic problems exist and that no laws have been broken, the OPO is recommending that:

- CSC review its other construction contracts to ensure a systemic problem affecting the fairness, openness and transparency in the procurement process does not exist and that no delegated financial or procurement authorities have been breached;
- CSC review the need for training in the area of procurement, including construction services, and devise an appropriate action plan;
- CSC should review, in consultation with Public Works and Government Services Canada and the Treasury Board Secretariat, the appropriateness and legality of

the B2B as a procurement method, including issues pertaining to the application of the GCRs, TB policy, and delegated departmental authorities.

Departmental response

CSC agrees with the recommendations in this report. CSC will, in 2009-2010:

- undertake a review of CORCAN construction contracts;
- assess the need for more training in this area;
- review the authority and scope of the B2B procurement method in consultation with PWGSC and TBS and review and revise the CORCAN Governing Principles as needed.