

Challenging old habits

Ontario towns write new procurement guidelines

THE TOWNSHIP OF SOUTH Dundas, Ontario, located along the St. Lawrence River between Brockville and Cornwall, is re-writing its procurement bylaw with the goal of making the process fairer and more transparent.

Each year, the Township purchases up to \$4.5 million worth of goods and services, ranging from printer paper to pick-up trucks. Currently, purchasing decisions are guided by a bylaw that primarily contains a series of dollar thresholds stipulating when staff can make decisions on their own, and when they must go to township council for approval.

"The new bylaw will be very clear and will make purchasing decisions more objective," says Chief Administrative Officer Andy Brown.

This is part of a province-wide move by municipal government in response to an amendment to the *Ontario Municipal Act* stipulating that municipalities have written procurement guidelines in place by January 1, 2005.

Some municipal governments are drafting procurement policies and bylaws for the first time. Others are revising existing policies and bylaws. In either case, "transparency and accountability are the goals," says Curry Clifford, manager of Municipal Services Delivery with the Ontario Department of Municipal Affairs and Housing. "We're trying to make municipalities accountable to the public when they purchase goods and services."

The amendment to the *Municipal Act* designates eight areas that must be covered in policies and bylaws, including the types of procurement processes to be used, the goals to be achieved by each type of process, and the circumstances under which each method is used. Municipalities must also spell out when in-house bids will be encouraged, a particularly important provision for unionized workers concerned about contracting out of services, such as garbage disposal, parks maintenance and the operation of recycling facilities. New guidelines must also safeguard the integrity of each type of procurement.

Ontario appears to be leading nationally in compelling municipal governments to develop bylaws and policies and in prescribing the subjects that must be covered. Clifford has informally consulted with counterparts in Saskatchewan, Alberta and British Columbia, and none have legislated procurement requirements. In Atlantic Canada, Ken Simpson, executive director of the Union of Nova Scotia Municipalities, says there is no such provision in his province, nor is he aware of any in the other three provinces in the Atlantic region.

Observers say most large Ontario municipalities already have policies and bylaws on the books and, in the majority of cases, they meet or come close to meeting the new requirements.

"I'm delighted with the new act," says Marlene Knight, manager of material management with the City of Mississauga. "It

highlights some of the challenges in purchasing today and codifies issues that [we] need to be thinking about."

Knight adds that purchasing is far more challenging than it was in the past when municipal officials were primarily acquiring hard goods. Today, purchases include sophisticated services and complex computer software packages. Another difficulty is simply keeping up with the demand, she says. Knight oversees seven buyers in Mississauga who are responsible for purchases of \$250 million annually.

Still, bigger municipalities are generally better equipped to meet the challenges posed by the new provincial requirement than their smaller counterparts. "There are lots of municipalities which have never had purchasing policies," says Christine Campbell, a senior buyer with the City of Mississauga, who conducted procurement seminars this spring for the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO).

The ministry has recognized the challenges posed by the new requirement and has attempted to assist in several ways. Ministry officials put together a panel of municipal procurement experts to develop a guide that explains how communities can comply with the new legislation. The guide is available in print version or on the ministry's website (www.mah.gov.on.ca).



AMCTO and the Association of Municipalities of Ontario (AMO) also ran seminars, as did the Ontario Public Buyers Association (www.vaxxine.com/opba). The buyers association has posted bylaws from several municipalities, including the Town of Aurora, City of Ottawa and County of Norfolk on its website.

However, drafting new bylaws or updating existing ones may be only half the challenge, says Campbell. The bigger hurdle to more open, accountable and transparent purchasing will be overcoming entrenched practices, the most common being a tendency to favour local vendors.

"The staff I met at the seminars were generally very well read, knew their stuff and were very professional," she notes. "But, too often, the delineation between councils and the administration is very weak. They're opening tender documents in council committees and there will always be a councillor who says 'I can get a better deal.' They tend to make emotional decisions."

Officials in smaller municipalities face another challenge that their big-city counterparts seldom encounter – a shortage of potential suppliers, which can undermine the whole notion of seeking competitive bids. This is particularly true in northern Ontario, says Campbell where road maintenance and construction are the big-ticket budget items, yet one company dominates the business across the region.

"There is basically one paving company in the north," she adds. "Municipalities up there often pay four times what we would ever pay in the south."

Municipal purchasing, meanwhile, is becoming an important issue with small- to medium-sized businesses in the province, says Satinder Chera, director of Provincial Affairs with the Cana-

dian Federation of Independent Business (CFIB). "Our members have told us they are not receiving their fair share of contracts," he says.

The CFIB would like to see several changes to municipal procurement, and made its positions clear to the previous Conservative provincial government, which passed the *Municipal Act* amendments. However, none of the Federation's specific recommendations were included.

Chera says the membership is particularly concerned about procurement policies at the City of Toronto and several other large municipalities that preclude non-unionized companies from bidding on contracts.

"We've had very little success in getting municipalities like Toronto to discuss union-only contracting," he says. "Most of our members can't bid. They're taxpayers, they help pay for these projects, but they're shut out."

Chera notes that many CFIB members want municipal governments to use procurement as an economic tool to help create jobs in small- to medium-sized firms. At the same time, the Federation strongly opposes the use of local preferences that favour companies within a community to the exclusion of competitors who may be based in a neighbouring municipality. Chera adds that the CFIB also recommended that municipalities enhance the transparency of their procurement processes by keeping databases of contract awards and by making them public.

For their part, some municipal officials believe that existing procurement policies have served the public well and foresee little change due to the new provincial requirements. "We've had a policy in place for a long time," says Paul Hewitt, purchasing manager with the Town of Ajax, a suburban community of 80,000 east of Metro Toronto. "The amendments have forced us to look at certain things and clarify them, but for us it won't be a big deal. It's mostly a matter of tweaking."

Larry Simons, clerk-administrator in Deep River, a town of 4,000 located 200 kilometres northwest of Ottawa, says his municipality has guidelines in place that are being updated. He maintains that he and his officials always try to be fair and transparent, and look for value for their money. But he also contends they can only go so far. "In small towns, the municipality and the community are one and the same," he says. "There are real pressures on councillors. If the store across the street just sent us a cheque for their taxes, they're going to ask us 'How come you're buying down the road?' That's a fact of life."

Still, Campbell cautions municipal officials to exercise caution when dealing with the inevitable pressures to favour the local vendor. "It's very expensive if you get sued for not awarding a contract to the low bidder," she says. "The cost of your contract is doubled, if not more."

The safeguard, she and others say, is a clear policy that sets out the procedures to be followed and includes built-in safeguards to protect the integrity of the process, as well as the interests of both the municipality and the vendor. ■■■

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