

## Is pre-qualification fair and equitable?



**H**mmm – fair and equitable. Defining fair and equitable is clearly a factor in the crucible, but for now let's pretend it means that suppliers each have a reasonably good chance to bid for, and get, government contracts, and that the "playing field" is level, or at least equally slanted, for all. In principle, pre-qualification appears attractive to everyone concerned, saving the buyer and seller time, effort, money and process once it is in place. So, let's have a look at what the public procurer should do to make sure the process is fair and equitable.

As usual, this *Chatroom* has three well-qualified participants. John Holinsky is a senior federal government procurement executive faced with the daunting and often thankless task of sincerely designing public procurement to ensure that it's fair and equitable. The CFIB's Garth Whyte is one of the foremost business and economic observers and analysts in Canada. Michael Asner is a respected procurement and management consultant and a former columnist at *Summit* magazine. What do they think? Well, let's see; let's chat!

### Getting to know you...

**Asner:** Lots of organizations use the pre-qualification process. Some break the large task down into two steps: first the pre-qualification and then the RFP. Others simply put the pre-qualification as the first part of the RFP... a short set of mandatory requirements that permits the vendors to be self-selecting. Both can get you great solutions. I prefer the combined approach for several reasons, generally based on the "simple is better than complicated, short is better than long" approach to procurement. Bertrand Russell, in his history of western civilization, spoke about the "principle of parsimony" or Occam's

**Sit down, take a deep breath, sip a beverage, open your mind and stay awhile while we chat with:**



**Michael Asner**  
President, Michael Asner Consulting, procurement guru, former *Summit* magazine columnist



**John Holinsky**  
Director General, Commercial Acquisitions and Supply Management, Public Works and Government Services Canada



**Garth Whyte**  
National Vice-President, Canadian Federation of Independent Business (CFIB)

razor: where given two equally valid explanations of a phenomenon, take the simpler one. With downsizing and crisis management, I look for ways to eliminate tasks, so one is always better than two – fewer documents, evaluations, phone calls, less time, and fewer meetings to get stakeholder buy-in.

**Holinsky:** Pre-qualification of suppliers is one of the tools used in the procurement process and it can be effective. Generally PWGSC posts notices of procurement opportunities on the government electronic tendering system, commercially available as MERX, inviting suppliers to submit their proposal on a case-by-case, requirement-by-requirement basis. A contract is awarded to the qualified firm submitting the 'best value' proposal as defined in the solicitation. We also use processes to pre-qualify suppliers prior to the award of the contract itself, for example, a complex procurement requiring an extensive proposal with a number of specific criteria for a bidder to be eligible. The solicitation could be conducted in two phases. Bidders submit their competency profile, experience, previous contracts, managerial structure, unique expertise, special capabilities, facilities or

whatever is needed. This first stage submission is evaluated and firms are determined to meet the necessary qualifications or not. Only those that meet, or subsequently meet, the criteria are invited to bid. This two-stage process can avoid a company spending considerable effort to prepare a proposal only to find it does not meet the basic requirement to be eligible.

**Whyte:** Like many aspects of public sector procurement, the devil is in the detail. Business can understand why governments may want to pre-qualify vendors. It makes sense to identify who can do the job and it can ease an overly complex process considerably. It also makes sense for vendors as it avoids repetitive and expensive pitches to government – the cost of bidding can be expensive and time consuming. How the pre-qualification is done is the essential factor in whether or not it's fair. This means that initially pre-qualification could be more work and expense for the buyer. It is crucial that government procurement specialists have the expertise and resources to research and assess the capabilities of the full range of suppliers, including those that may not be traditional. Governments who use pre-qualification had better use procurement specialists who know what they are doing and who understand the marketplace for their commodity very well. In the first stages of procurement, this is an added task – savings for government and suppliers come in the contracting process.

### Getting to know all about you

**Whyte:** Small businesses can be especially disadvantaged if pre-qualification is not done right. Few small or medium businesses can spare the time or money on the resources needed to make themselves sufficiently known to compete with larger vendors for government contracts. Yet they may be equally or even more capable of delivering or performing the product. So governments have to make an extra effort

to research suppliers and offer an equal opportunity to all potential vendors.

**Asner:** If the pre-qualification is very general, such as for 'systems integrators,' there will be a large pile of documents to review, taking time and energy. This can drag you into the 'qualification' business with lists of approved firms rather than the 'procurement' business. One client I know, after placing an ad in a newspaper for vendors to be pre-qualified as negotiators or facilitators or some other fairly generic skill, got hundreds of responses. The client was committed to evaluating each response, treating all 'fairly and equally.' They dedicated staff and resources to organize all the responses and, before they knew it, they were in the 'pre-qualification, maintain the list, business.'

**Holinsky:** A variation of the pre-qualification approach is often used for architectural and engineering contracts. Companies, as part one of a two-part process, submit basic information concerning their qualifications. These submissions are evaluated and scored using a pre-determined evaluation grid. The score is then passed to the bidder together with the range of all the other scores, allowing bidders to assess what their chances may be in the subsequent round of the competition. Some bidders may decide not to compete, saving the time and expense of a proposal that may not have much chance. A pre-qualification process can also be used for standing offers or supply arrangements for a recurring requirement. Rather than doing a separate solicitation for each job during the year, one process can select one or more firms capable of performing the work and offering the skills appropriate for the requirement. A best value selection process is used to identify the firm or, if the need is sufficiently large, a number of firms that have the appropriate qualifications to receive standing offers or supply arrangements for all requirements for the year. Thus, when a contract is to be awarded, there is assurance that the firm is fully capable of performing the work. The contract

can be awarded much quicker. Time and expense are saved by both bidders and evaluators.

### It's all good, isn't it?

**Holinsky:** In any contract-award process including those which use pre-qualification techniques, the procurement officer must be mindful of providing fair and equitable opportunities for bidders to be considered, especially given the free trade agreements, which often govern procurements conducted by the federal government. This might mean, especially where long-term standing offers or supply arrangements are used, that a process has to be established that allows new suppliers to present their qualifications and if they meet the criteria, to be added to the list.

**Whyte:** Pre-qualification can also be an impediment to innovative or alternative products and services. Suppliers who are not well established in a given commodity or service can occasionally offer a different approach, one the buyer may not be aware of or appreciate. If such suppliers are not invited to pre-qualify, or if their product is not sufficiently established in the marketplace, they can be left out. And since smaller entrepreneurs are often the source of innovation to supposed industry standards, being left out can have an inordinate impact on the small business sector.

**Asner:** There is often a significant delay between the pre-qualification step and the issuing of an RFP. During that time, other vendors may have entered the marketplace, so you can be accused of unfair practices unless you leave the "call for pre-qualification" open ... and that brings another set of problems and tasks. I'm not certain what value this separate step adds to the process; it doesn't shorten the work of either the buyers or the vendors, it lengthens the process. Why have 50 vendors generate pre-qual' info when only five would respond to the RFP. So 45 vendors have spent time for little benefit, and the purchasing organization has also spent enormous amounts of time... unless of

course you let anyone who responds to the pre-qualification submit a proposal. In which case, it's simply an announcement for expressions of interest.

### Fair is fairly fair!

**Whyte:** CFIB members are generally opposed to any kind of set aside or undue influence on competitive government contracting. If pre-qualification is used to provide an advantage to a particular class or group of suppliers, or if it is implemented in a way that is unduly restrictive, it can have the same effect. So, like many other reasonable ideas in government, whether pre-qualification is fair and equitable depends on whether it is done fairly and equitably.

**Holinsky:** Is vendor pre-qualification fair and equitable? Yes – provided that the solicitation thoroughly describes the process that will be used, and if bidders have a clear understanding of how they will be judged, and what the criteria are for evaluation and selection. Pre-qualification can save bidders the expense of preparing detailed proposals when they do not meet basic criteria. It can save time and effort for evaluators reviewing unacceptable or marginal proposals. It can also allow for the award of a contract to be made in a very efficient and effective manner. This is a clear win-win for everyone involved in the bidding process.

**Asner:** I like RFPs that force the vendor to pre-qualify itself. A few years ago, the state of Massachusetts was looking to outsource its IT processing. The RFP stated something like "while we are committed to accepting proposals from all qualified firms, we anticipate that the winner of this competition will be a firm that has done at least two billion dollars in similar work over the last five years!"

## Next chatroom

### Limiting supplier liability