

# Treading carefully

## Wining and dining under scrutiny



by Phuong T.V. Ngo

**F**OR THE PRIVATE SECTOR, wining and dining a government client must be undertaken with good sense and caution, especially where the client is a purchaser of goods and services. The same applies to government clients who must also be watchful in accepting the offered hospitality. This is especially true in today's environment of allegations of inappropriate behaviour by public servants, greater scrutiny of government spending and increasing procurement challenges based on an apprehension of favouritism in the contracting process.

Companies who do business with the federal government must be mindful of the recent Treasury Board Secretariat's *Values and Ethics Code for the Public Service*, which came into effect on September 1, 2003. The code (available online at [www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/TB\\_851/vec-cve\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp)) sets out guidelines for public servants on issues such as avoiding conflicts of interest, and is intended to engender behaviour which will avoid even the perception of preferential treatment or assistance to one party, especially when financial rewards are involved. Burdened taxpayers are demanding less suspicion of "pork barreling" and a higher degree of scrutiny and accountability where expenditure of taxpayers' monies is concerned. These guidelines therefore arrived in a timely fashion. However, whether or not they will have a meaningful impact remains to be seen.

A public servant is supposed to "provide honest and impartial advice to ministers" and the code is intended to assist public servants in protecting themselves from conduct for which they could be criticized as being biased or unfairly influenced by a third party. Companies contracting with the government should therefore pay particular attention to the chapter of the code, which deals with conflicts of interest:

"Avoiding and preventing situations that could give rise to a conflict of interest, or the appearance of a conflict of interest, is one of the primary means by which a public servant maintains public confidence in the impartiality and objectivity of the public service."

The gifts and hospitality that some companies consider to be a normal part of their business development activities outside of the public sector may be interpreted under the code as giving rise to a situation of real or perceived conflict where public servants are involved. The code requires, for example, that the public servant "shall not accept or solicit any gift, hospitality or other benefits that may have a real or apparent influence on their objectivity in carrying out their official duties or that may place them under obligation to the donor. This includes free or discounted admission to sporting and cultural events arising out of an actual or potential business relationship related to the public servant's official duties."

As a general rule, gifts and hospitality may be extended to and accepted by public servants only if they are infrequent and

of minimal value, arise outside activities related to the duties of the public servant, are within normal standards of courtesy, hospitality or protocol, and do not compromise or appear to compromise the integrity of the public servant or his or her organization.

Care has to be taken that business promotion and development with the federal government cannot be perceived in any way as a form of inducement to favour one company over another. This is especially critical in situations where a company is bidding for a contract and has a history of offering gifts and hospitality to the public servants who become involved in the evaluation or award of a contract. Charges of bias or preferential treatment are sure to follow. Companies should always ask whether the gift or hospitality being offered could possibly be perceived as being of a nature which personally benefits the public servant or which could appear to influence them.

A number of complaints with the Canadian International Trade Tribunal (CITT) have alleged conflicts of interest where an evaluator's impartiality has been said to be compromised, whether by being on too familiar terms with the bidders or by having been improperly influenced by a particular bidder.

Under the provisions of *NAFTA* or the *Agreement on Internal Trade*, a contract must be awarded on the sole basis of merit, the specified requirements, and the evaluation scheme set out in the tender documents, among others. A reasonable apprehension of bias in favour of a particular bidder can form grounds for potential complaints with the CITT. Actual bias does not have to be demonstrated; it is the mere reasonable apprehension of bias that is objectionable.

Building good personal relationships and educating the government about a product is a legitimate objective. However, there is an added layer of sensitivity when dealing with government officials that is not present in the private sector. A perception that a public servant may have been influenced by gifts or hospitality to award a contract could be fatal to that contract. ~~~

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