



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Government Operations and Estimates

OGGO • NUMBER 092 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, June 4, 2013

—
Chair

Mr. Pat Martin

Standing Committee on Government Operations and Estimates

Tuesday, June 4, 2013

• (1130)

[English]

The Chair (Mr. Pat Martin (Winnipeg Centre, NDP)): Ladies and gentlemen, we'll begin the proceedings. Because we lost a bit of time due to the vote today, we'll have a bit of a truncated meeting.

Welcome to the government operations and estimates committee. We're here today to discuss the integrity provisions for procurement and real property transactions. We're pleased to welcome as witnesses, representatives from the Department of Public Works and Government Services. Leading the delegation, I presume, is Deputy Minister Madame Michelle d'Auray.

Ms. d'Auray, welcome. I understand you have opening remarks. I'll perhaps leave it to you to introduce the rest of the guests you've brought with you today.

Let's proceed without delay.

You have the floor, Madame d'Auray.

Ms. Michelle d'Auray (Deputy Minister, Deputy Receiver General for Canada, Department of Public Works and Government Services): Thank you very much, Mr. Chair,

[Translation]

and members of the committee.

[English]

Good morning. I welcome this opportunity to present and discuss with the committee the measures that Public Works and Government Services Canada has put in place to uphold the public's trust in procurement and real property transactions—

The Chair: There is a fire alarm. We will suspend the meeting.

• (1130)

_____ (Pause) _____

• (1150)

The Chair: Welcome back, ladies and gentlemen.

We will reconvene this session of the government operations committee dealing with the integrity provisions for procurement and real property transactions. When we were interrupted by what I assume was a false alarm, Madame d'Auray, our deputy minister, was just about to begin her opening remarks.

I give the floor back to you, Madame d'Auray, but I will caution committee members that we need about 10 minutes at the end of this meeting to talk about some planning. We'll go in camera for the last 10 minutes.

We should have about one clean hour with you, Madame d'Auray. Please proceed.

Ms. Michelle d'Auray: Thank you, Mr. Chair.

Good morning, again. It's still morning.

We are here to present and discuss with the committee the measures that Public Works and Government Services Canada has put in place to uphold the public's trust in procurement and real property transactions.

With me today is Barbara Glover, the assistant deputy minister from the departmental oversight branch. Barbara's branch encompasses the sectors that we call operational integrity, special investigations, forensic accounting, and industrial security. It also includes our office of internal disclosure, under the PSDPA.

Pierre-Marc Mongeau has appeared before you many times. He is here with me today as the assistant deputy minister, real property.

Pablo Sobrino is the associate assistant deputy minister, acquisitions. He was before you recently with regard to the integrated relocation program. Those are the colleagues with me today.

[Translation]

As deputy minister, I am proud of the key role my department plays as a common service provider so the departments and agencies can obtain the goods, services and accommodations they need to serve Canadians. The department is also the primary interface between government and business on a wide range of business activities.

Over the past three years, we have overseen an average of 49,000 procurements a year with an average value of \$14 billion; we house some 270,000 public servants in more than 1,800 locations across the country, involving about 500 real property transactions per year.

As you can well imagine, the procurement processes by which we make these acquisitions and transactions can vary from the immensely complex, involving significant dollar values and sophisticated equipment and services, as is often the case with military procurements, to those of lower dollar value or greater volume and more recurrent requirements, such as supply arrangements and standing offers for a wide range of goods and services.

• (1155)

[English]

Given our roles and responsibilities, Public Works and Government Services Canada has a strong history of working to protect the public interest from those with criminal or corrupt motives. My department has a framework in place that supports accountability and integrity in procurement, with strong governance, codes of conduct, fairness monitoring, audits, financial controls, and internal investigations. These mechanisms apply to all those involved in our procurement activities.

I understand the committee has expressed interest in the fairness monitoring program and our integrity framework.

[Translation]

So I will start with the fairness monitoring program, which is a component of our integrity measures. The program was formally instituted in 2005 and expanded in 2009 to provide management, client departments, suppliers, Parliament and Canadians with independent, third-party assurance that our large or complex procurement activities are conducted in a fair, open and transparent manner. The program covers all complex or major departmental procurement and real property transactions. The findings are publicly released on our website.

[English]

Our policy on fairness monitoring requires a mandatory assessment for coverage with regard to activities in which risk related to sensitivity, materiality, or complexity is such that fairness monitoring coverage is warranted, as well as for all departmental activities subject to ministerial or Treasury Board approval.

Other departmental activities, for which an enhanced assurance of fairness, openness, and transparency is desired, can also be covered for fairness monitoring, whether mandatory or optional. The assistant deputy minister for oversight reviews these assessments and makes her recommendations to me on whether or not to proceed with fairness monitoring.

The most recent improvement to the program is a new standing offer for the services of fairness monitors, which will be issued shortly with a start date of June 10, 2013. This includes formal terms of reference for fairness monitoring engagements. I believe the committee had asked for the statement of work for the procurement of those services, which I understand we have provided.

The terms of reference will ensure alignment between fairness monitors and the department on the standard of fairness to be used, and the standard of conduct for fairness monitors to follow during fairness monitoring engagements.

[Translation]

I will now turn to our overall integrity framework.

All PWGSC employees must adhere to the department's code of conduct that includes specific provisions for the proper management of procurement activities through compliance with all available practices, controls and policies; and to prevent situations of real, potential or apparent conflict of interest. Employees must disclose when considering or engaging in outside employment and/or

ownership of businesses, and comply with guidelines related to gifts, hospitality and other benefits.

Over and above this general code, the department implemented in 2007 and then updated in 2012 a code of conduct for procurement that applies to suppliers and to departmental staff and that outlines what is acceptable conduct when contracting with the government. Our goal is to ensure that the department conducts its business to the highest ethical standards, standards that Canadian citizens expect us to uphold and protect. It is a role that we take very seriously. And we have implemented significant compliance measures.

• (1200)

[English]

Let me give you an overview of these significant compliance measures.

Starting in 2007, as part of the Federal Accountability Act and its action plan, Public Works and Government Services Canada included a code of conduct for procurement in its solicitation documents, which included "payment of a contingency fee to a person to whom the Lobbying Act applies" to existing offences, which rendered convicted suppliers ineligible to bid on procurement contracts. The code also included frauds against the government under the Criminal Code and under the Financial Administration Act. Bidders formally certified with their bids that they had read the code and agree to be bound by its terms.

Building on these measures, in 2010 the department added anti-competitive convictions under the Competition Act to its list of offences that render bidders ineligible. These convictions include corruption, collusion, bid-rigging, or any other anti-competitive activity.

[Translation]

In July 2012, the department further expanded the list of offences that, if convicted, would render companies ineligible to do business with PWGSC. These offences include money laundering, participation in activities of criminal organizations, income and excise tax evasion, bribing a foreign public official, and drug trafficking.

For the first time, PWGSC also applied its integrity provisions to all real property transactions, which includes leasing arrangements for all uses, letting of commercial crown-owned space and the acquisition and disposal of crown-owned properties.

[English]

In November 2012 the department further clarified its integrity measures by removing the leniency exemption and introducing a public interest exemption. Leniency provisions allow an applicant to come forward, cooperate, and plead guilty in exchange for lenient treatment in sentencing. Given the seriousness of the infractions identified in the integrity provisions, the department no longer does business with individuals and companies found guilty of these offences unless exceptional circumstances require it for the public interest. This applies even when leniency may have been granted to the company through a program.

Under these provisions, the department can no longer enter into a contract or real property transaction or accept bids from individuals, companies, and the current members of their board of directors, including company affiliates, convicted of listed offences. These measures do not apply to company employees.

Should a company or a member of its board of directors obtain a record suspension—it used to be a pardon—or have its capacities restored by the Governor in Council, they would become eligible to do business with Public Works and Government Services Canada. In instances of public interest such as health and safety, emergencies, national security, or if there is only one supplier, the department could maintain the contract.

Successful bidders are required to maintain relevant information and their certification for the duration of the contract. Bidders and their officers must remain free and clear of convictions specified in the code of conduct, which is incorporated into their contract.

[Translation]

If a company is convicted of an offence after a contract has been awarded, the department may cancel the contract for default if the terms and conditions of the contract include our enhanced integrity provisions.

However, these provisions are not retroactive. So in cases where the provisions are not in the contract, the department is legally obligated to honour the contract. In such instances, heightened scrutiny and oversight and rigorous controls may be imposed for the remainder of the contract to protect taxpayers' interests.

Should we suspect wrongdoing, the department will not hesitate to take action, including procurement and administrative reviews to detect any irregularities; examining all invoices to ensure their accuracy; requesting the voluntary inclusion of the department's integrity measures in contracts; audits; and formal or departmental investigations.

If the department suspects wrongdoing, we will not hesitate to take the necessary measures, including requesting formal investigations by the RCMP or the Competition Bureau.

[English]

These measures apply only to Public Works and Government Services-managed procurements and real property transactions. The department manages approximately 83% of the value of all government-wide procurement. Departments and agencies have a delegated authority to contract for goods up to \$25,000. Some departments have exclusive authority for goods contracting.

Departments and agencies may contract for services under their own delegated authorities. However, a number of organizations that have such delegations or authorities, such as the Canada Revenue Agency, have entered into a memorandum of understanding with our department so as to be able to benefit from our integrity provisions.

The department has put in place numerous measures that demonstrate its commitment to doing business with companies and individuals that respect the law and act with integrity. The department will continue to build upon these measures. That is our responsibility as stewards of public funds.

We continue to enhance our approaches and measures. For example, last month we entered into a memorandum of understanding with the Competition Bureau of Canada to promote cooperation between our two organizations on the prevention, detection, reporting, and investigation of possible bid-rigging or cartel activity. Our minister has also asked us to explore improvements to the framework and to see how it could be applied more broadly across government.

Mr. Chair, this concludes my remarks.

● (1205)

[Translation]

Thank you for the opportunity to present our integrity measures and fairness monitoring program.

[English]

The Chair: Thank you, Madame d'Auray.

I know there's great interest and a lot of questions.

We'll proceed right away to the first name on the list. From the official opposition we have Linda Duncan.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair.

I'll go right to it.

I've noted that over time there have been some improvements to ensure the integrity of the procurement process. What troubles me is this is by code of practice.

My question to you, Madam d'Auray, is this. Why have no regulations ever been promulgated under sections 41 or 42 of the Financial Administration Act to make these measures legally binding regardless of whether they are included in a code that is attached to a contract? Why have no amendments to the Financial Administration Act been made to add the offences that are in the code of conduct?

Ms. Michelle d'Auray: Thank you for the question.

The offences that are listed and for which companies are bound to respect the legislation are based on legislation. The charges can be put in the existing legislation whether it's the Criminal Code, the Financial Administration Act, or the Competition Act. The legislation to support these infractions or to charge the companies already does exist. They are bound when they sign their contracts to uphold and to be free of convictions under these offences, and we can essentially terminate the contracts for a default.

Ms. Linda Duncan: Okay. I won't pursue it further, but it doesn't really answer my question.

Yes, indeed, if you violate the Criminal Code, you violate the Criminal Code. But the decision by this government has been to use a non-legally binding code of conduct instead of, in fact, issuing regulations under the legislation. I remain puzzled as to why, given the potential seriousness and the scale of the size of these contracts, we wouldn't proceed in that way.

My next questions are about the fairness monitoring. We welcome Ms. Glover, who I understand is the ADM who would be responsible for the fairness monitors.

There have been a good number of questions raised about the fairness monitors. I know that you will not feel comfortable discussing the specific case brought by Envoy, which is potentially under appeal—not yet filed, as I understand—but I would like to ask you questions about the issues that were raised and whether you think those are worth pursuing.

The justice of the Ontario Superior Court of Justice in that case raised serious questions about the partiality of the monitors, due to the fact that they are directly retained and remunerated by Public Works, and therefore, he said, "He who pays the piper picks the tune". There is at least the appearance of bias in that, if you're a monitor, you're not going to want to find that there are problems with the way Public Works is administering the contracts.

There have been suggestions also by the OECD that there should be independent mechanisms set up. In their "OECD Principles for Integrity in Public Procurement", in principle 9, they have recommendations for the better handling of complaints from potential suppliers in a fair and timely manner, and actually recommend the establishment of an impartial review body with enforcement capacity independent of the procuring entities, which would rule on procurement decisions and provide adequate remedies.

I'm curious to know if you have taken into consideration, given various issues that have arisen over the last couple of years and in the recent case—which is, I understand, under appeal, and it's not the only case proceeding—are you giving consideration to the OECD principles, which I presume we subscribe to in this country, and to the issues raised by the court generally about the role of the fairness monitors?

Ms. Michelle d'Auray: Perhaps, Mr. Chair, I'll start with the OECD principles.

We do have two bodies that oversee procurements. The first one is the trade tribunal, the CITT, and the second organization is the Procurement Ombudsman. So we do have independent bodies. One is a tribunal, so it has a power of remedy, and the other one, the

Procurement Ombudsman, does have the power to address complaints.

I will ask Ms. Glover to talk about the fairness monitoring program, the independence of it, and how we go about selecting the monitors, and how they're reporting. Their work in relation to the department is, indeed, independent.

• (1210)

The Chair: If I could interrupt you, Ms. Glover, could you give us maybe a 45-second or one-minute introduction to that theme. I'm sure you'll have opportunities to expand on it with other questions, but Ms. Duncan is almost out of her time.

One minute or so?

Mrs. Barbara Glover (Assistant Deputy Minister, Departmental Oversight Branch, Department of Public Works and Government Services): Sure.

The fairness monitoring program was formally put in place in 2005. As Michelle mentioned in her introductory remarks, we have recently updated the standing offer. The way we seek fairness monitors is through a standing offer. That process is complete. We seek folks from outside the department who are independent and who have various credentials, which are laid out in the statement of work that we provided you earlier. We ask these people to come in, observe the procurement process from beginning to end, essentially, prior to setting out a request for proposal.

They engage in real time with the folks in charge of the procurement. They are asked to observe every aspect, to read all of the documents related to a procurement, to make observations, again in real time, and then to prepare a final report, which is posted.

At the beginning of engagement they need to attest to their independence, i.e., have no possible conflict of interest in undertaking their work. They are engaged by my branch, which is to say not the folks undertaking the transaction, whether it's a real property or procurement transaction.

Is that...?

The Chair: If I could, I'll stop you there. I think that's a good overview, Ms. Glover. As I say, I'm sure there will be further questions where you can expand on that.

Next, then, for the Conservatives, is Mr. Ron Cannan.

Hon. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for coming back to the committee again on a very important issue.

Integrity and public trust in the public procurement processes are paramount. I appreciate the changes that we've embarked on since forming government in 2007 and even recently, as you mentioned, some of the new additions. But there is still some perception that there are loopholes with some companies that are holding contracts with the government and getting around the policy. Maybe you could expand a little bit and clarify where that perception originates from. Thank you.

Ms. Michelle d'Auray: Thank you for the question. As I indicated in my remarks, the provisions, if they are not included in existing contracts, are not retroactive. So if the offences are committed by a company or if they're convicted with an existing contract, we can take measures. Some of them are to undertake more administrative reviews. We can put more scrutiny on the processes. But there are a number of instances where that exists. We can also ask the companies to open up the contracts under which they are currently providing services to include our measures.

But it is not a retroactive process. What we do in those instances if convictions occur during the course of a contract is that we undertake more significant monitoring and more oversight in the process. As we refresh our various procurement instruments, we include all of our integrity provisions in those requirements. We ensure at that point that with companies or board members who are convicted of offences, we can terminate the contracts for default.

Hon. Ron Cannan: Thank you for that clarification.

On the difference between being convicted and pleading guilty, if somebody knows they have been caught and they say they'll plead guilty, then they can continue to do business, whereas if they were convicted they could possibly be prevented from doing business. Is that correct?

• (1215)

Ms. Michelle d'Auray: That is one of the reasons why in November of 2012, we enhanced the provisions in order to remove leniency as an element that would allow a company, its directors, or its affiliates to be able to contract with the government, because the nature of the offences upon which the company or directors would have been found guilty were sufficiently serious for us to then consider that leniency was not sufficient. Therefore we would remove those companies from the opportunity to bid or to be given contracts by the government.

It is, however, still tied to a conviction. But the leniency provisions are no longer an exemption that we allow.

Hon. Ron Cannan: Thanks.

What kinds of consultations do you have with the provinces and territories?

Ms. Michelle d'Auray: We have provided a lot of the information to my counterparts in the provinces and territories. They all have different mechanisms and structures around how they deal with their procurement processes.

We have also undertaken a fairly significant consultation process with associations. A number of them have indicated to us that there are additional elements that they would like to see covered, such as offences in foreign jurisdictions. We are currently looking at that.

Hon. Ron Cannan: Excellent.

In your preamble you shared a little bit about your successes. Maybe you could expand a little bit more on how the integrity process is unfolding to other agencies and departments within the government.

Ms. Michelle d'Auray: As I indicated in my remarks, we cover almost 83% of procurement across government, but departments do

have their own authorities and some organizations do not or are not required to use Public Works and our procurement services.

We have in a number of instances developed a memorandum of understanding and a number of organizations have signed those with us, so they will voluntarily apply our integrity provisions. They come to us when they are about to issue a contract to make sure that the companies with which they are contracting are indeed who they should be contracting with.

We are working with our colleagues at the Treasury Board of Canada Secretariat to see how we could more broadly apply the measures across the government. The procurement policy instruments really rest with the secretariat.

Hon. Ron Cannan: So does the 83% include real property transactions as well?

Ms. Michelle d'Auray: No. Those are just the procurements. For the real property transactions I would ask my colleague to see what we cover.

We cover a fair chunk of the office accommodation, but we do not cover some of the specialized areas such as, for example, the CFIA or Parks Canada. They have their own ability to procure and to do their own real property transactions.

We have offered to those organizations that if they so wish to engage with us, we will agree, sign protocols, apply using our own instruments to their processes, but they are not required or bound to do so.

Hon. Ron Cannan: So if somebody is disqualified...

The Chair: I'm afraid that will have to do it for now, Ron. You're well over your time. Thank you very much.

We're going to go to Denis Blanchette for the NDP.

[Translation]

Mr. Denis Blanchette (Louis-Hébert, NDP): Thank you, Mr. Chair.

My thanks to our guests for joining us.

I would like to go back to the way in which the fairness monitors work. Given that these can be very expensive contracts in very specialized areas, I would like to know how you are choosing these monitors.

Ms. Michelle d'Auray: Mr. Chair, they have to have both expertise and experience. They have to be able to follow the procurement activities. I will ask Ms. Glover to provide more detail about the way in which fairness monitors are chosen. Once they are on a list, essentially a list of standing offers, there is a rotation.

Mr. Denis Blanchette: Is that a prequalification?

Ms. Michelle d'Auray: It is, but it is more than that. Once they are chosen, we can award contracts immediately to the companies and suppliers that have been chosen. But there is a rotation mechanism. Ms. Glover makes the selection using a mechanism that I would call independent in the sense that there is no preselection. It is done according to the rotation. Her two colleagues who use the mechanism have no influence over the choice.

• (1220)

Mr. Denis Blanchette: Okay.

[*English*]

Ms. Barbara Glover: Just to add, it's part of the statement of work, which you all have. It states what the fairness monitoring team must have to be eligible. They must have a range of knowledge, disciplines, and skills to carry out the engagement. That means they can acquire a specialist on a specific transaction.

For example, for a complex real property transaction they may wish to bolster their team with a subject matter expert, and that's laid out. There's a provision for that.

They themselves—

[*Translation*]

Mr. Denis Blanchette: Your description of the program gives us an idea of the way in which contracts are managed. The way in which the criteria are evaluated interests me a lot. You know as well as I do that, in a tendering process, the criteria are everything. They define the requirements, pure and simple. Sometimes, people can even be tempted to eliminate potential suppliers by setting criteria that are too specific.

How do you measure that kind of work?

Ms. Michelle d'Auray: When fairness monitors are called in, they have to follow all the steps in the government procurement process. So they have to be there when the first consultations with potential suppliers are held. When the statements of requirements are drawn up, they have to make sure that it is done correctly and that there is no bias in the process. They follow the process from beginning to end.

Mr. Denis Blanchette: Great.

Ms. Michelle d'Auray: The various players have direct access to them.

Mr. Denis Blanchette: Thank you very much, Ms. d'Auray.

I will pass the rest of my time to Ms. Duncan.

[*English*]

Ms. Linda Duncan: Thank you.

The Chair: You have one minute, please.

Ms. Linda Duncan: I'd like to follow up on the fairness monitoring. There are some concerns in the committee. We wanted to have one of the fairness monitors come forward and we were told they're no longer with the company.

Who actually signs off on these monitoring reports? There have been serious questions raised about the efficacy of this process and how transparent it is when incidents arise. You issued the standing offer with no idea of who's going to be from time to time available. So who actually signs off on these monitoring reports? Who's

ultimately accountable for saying something is fine, because certainly we've had circumstances where the fairness monitor has said it's fine, and the courts are saying, we're finding serious problems.

The Chair: Perhaps you could limit your response to about 30 seconds, please.

Mrs. Barbara Glover: The report is signed off by the fairness monitor. There's no engagement. The department does not sign off.

Ms. Linda Duncan: Well, within a company, you give a standing order to a company who can farm this out to whomever, and most people disappear. Who is actually accountable for signing off? Somebody gets the standing offer. Aren't they accountable?

Mrs. Barbara Glover: Yes, they're accountable when they engage in a specific activity, a specific fairness monitoring activity. They propose a team. So for transaction x —

Ms. Linda Duncan: I know the process, but I'm asking, who signs off? The company that has the standing offer presumably should be responsible for the efficacy of the report provided. Yet they seem to be saying, "It wasn't us. We farmed it out to someone and they're no longer employed by us."

Mrs. Barbara Glover: It's not quite that way. I'm not sure how to speak really fast in the time left.

The Chair: I'm afraid there's no time left, but I think we would be interested in hearing more about that. Just by explanation, our committee has had a terrible time trying to get IT/NET to this committee. They were the fairness monitor twice in a row for this huge relocation program and now they won't come to our committee, because they say nobody in our company remembers anything about either the 2004 or the next.

So there is no fairness monitor who is willing to explain how that company keeps getting the same contract, year after year, and clearly they didn't do it fairly or there wouldn't have been a \$30 million court settlement that ruled it was unfair.

So that one went south, and committee members want to know more about how it went south, I think.

Now we'll hear from Bernard Trottier.

• (1225)

Mr. Bernard Trottier (Etobicoke—Lakeshore, CPC): Thank you, Mr. Chair.

Thank you for your presentation, Madame d'Auray.

It was very helpful to see the improvements that have been made over time, and it's fair to say, especially since the Federal Accountability Act. You talked about the increased transparency with respect to lobbying, which is important, and also toughening up the Criminal Code, and some of those provisions around things that would exclude suppliers. You also spoke about beefing up the Competition Act recently, and then also in 2012, some tougher rules for procurement.

It is my observation that the federal procurement rules are tougher than any other level of government in this country. Certainly, with respect to municipal procurement, we see time and time again some problems there. I'd say the federal rules are probably tougher than any provincial rules. It's a lot of procurement, \$14 billion, as you say, and about 49,000 procurements a year.

I want to ask some questions about some further levels of detail on how that's enforced. When Public Works and Government Services Canada excludes a company that's convicted of an offence, are those companies ever back on the list, or is that forever?

Ms. Michelle d'Auray: Thank you, Mr. Chair.

That is an interesting question and one that has been posed to us. Right now, it is forever. One of the questions some of the associations have asked us is whether there could be a time-limited debarment. I think that is one of the elements we are also considering.

You mentioned provinces, territories, and other jurisdictions. We've also looked around the world to see what the measures are and what is being applied. Some countries and some jurisdictions have time limitations. Some have them forever. Some have processes to become re-enabled, if I can put it this way, beyond what we have here as a pardon or a record suspension.

We are looking at what other jurisdictions are doing around the world in this area. As one of the members pointed out, the OECD has made a number of recommendations in this area, and I would say most jurisdictions are grappling with some of these issues. So how best to address them and to continue to enhance our framework or to improve the framework is one of the areas where we're continuing to spend time and effort.

Mr. Bernard Trottier: What about the principals in a supplier firm that was disbarred from bidding on government contracts? Suppose they show up in another company, would some of those disbarments apply to the new company they've joined?

Ms. Michelle d'Auray: That, too, is a phenomenon that we are noticing in a number of areas. That is why the provisions apply to companies, their affiliates, as well as their boards of directors.

I could, perhaps, ask Ms. Glover to speak to what measures we take to make sure that the framework applies. There may be some changes in structures that would allow a company to return.

Maybe you could speak to some of those.

Mrs. Barbara Glover: Companies reorganize. That's a fact. We try to look carefully when there is a conviction at who the affiliates are. We use a control test and we try to apply it quite rigorously. It's not always transparent. When we talk about a public company, it's fairly easy to do. When we talk about private companies, it gets more challenging. In fact, we use our forensic accountants in my shop as well as consult with our legal services colleagues to examine the transactions, and really, whether it's bona fide, which is to say whether the affiliate is still an affiliate or not.

In terms of company directors, there can be a test of how the control is exercised. As an example, a company director could move to another company but they may still be exercising control over an affiliate.

I don't know if that answers your question.

Mr. Bernard Trottier: Yes, that's helpful.

Does PWGSC reward companies that do compete in a fair and transparent manner by creating a register of authorized suppliers?

Ms. Michelle d'Auray: No, we don't create a register of companies good, bad, or indifferent. The closest thing we come to a register, if I can put it this way, is when we have standing offers or supply arrangements where pre-qualified firms are listed for a specific procurement. That is another question that other jurisdictions have grappled with—creating lists versus not creating lists. As we're finding in jurisdictions, as soon as you create a list, put a name on a list, it becomes dated and you have to start all over again.

We prefer currently what I would consider to be our dynamic model, which is that every time a contract is up, we actually check every time there's a contract amendment. There's a process where we validate. It is a constant updating of our own information, as opposed to having a list that can be pretty static or stale-dated fairly quickly.

● (1230)

Mr. Bernard Trottier: Thank you very much.

The Chair: Thank you, Bernard.

For the Liberals, next is John McCallum.

Hon. John McCallum (Markham—Unionville, Lib.): Thank you.

Let's suppose that one or more executives of a company are convicted of a crime, so that bans the company from doing business. But those bad people, as it were, subsequently leave the company or are fired, would the company be reinstated or would it continue to be banned?

Ms. Michelle d'Auray: With regard to executives of a company, unless they have a controlling interest in the company, it does not apply to employees of a company. It applies to the company as an entity or to its board of directors with a controlling interest.

Hon. John McCallum: But somebody has to be convicted of the crime. Is it only the directors, not the CEO?

Ms. Michelle d'Auray: Barbara, you can expand on this, but if the CEO is a director with an interest in a company, then yes, a conviction would apply to the company. The company as an entity can also be convicted, but these measures do not apply to employees of a company.

Hon. John McCallum: Okay. But let's say the CEO is convicted and that bans the company from doing business and the CEO then leaves and sells his or her interest, does that mean the company would then be reinstated?

Ms. Michelle d'Auray: Yes. If it's the individual, in this instance the CEO, who was a director of a company and that director is no longer there, then yes, the company would be allowed.

Hon. John McCallum: I would have thought that if there were a culture of corruption, if you wish, the simple removal of that one person might not make the company honest overnight, yet they're allowed to do business as usual. Is that correct?

Ms. Michelle d'Auray: It would be but then it doesn't preclude us from taking additional measures to ensure that the processes are transparent and making sure the integrity of the invoicing or of the activity is sustained.

I don't know if you wanted to add to that, Barbara.

Mrs. Barbara Glover: There are two possibilities. The officer is fired or leaves or quits, and the company still has a culture of a lack of integrity. In that case, we have a range of measures. Under our measures, we would still do business with that firm but there's a fairly long list of things we could do to monitor contracting invoices, to raise the level of delegation of who is signing off on contracts or invoices. We could talk to the company and specifically make requests of them around improving, say, the values and ethics of the company, and we have done that.

Hon. John McCallum: Thank you.

Who makes the decision whether the public interest exemption will be granted or not?

Ms. Michelle d'Auray: It is on a case-by-case basis. It is in fact... I believe there's an integrity committee that my colleague, Barbara Glover, chairs.

Hon. John McCallum: Can you tell me, since this began in November 2012 how often have public interest exemptions been granted and under what types of situations?

Ms. Michelle d'Auray: We have granted these exemptions in three instances. Once was because the company was a sole supplier in a remote region and there was nobody else available to provide the service or the good. The second instance was where there was a specialized test that no other company could do. This was in the domain of health diagnostics. The third one was, again, an instance where there was only one supplier of a particular good. There was nobody else in Canada who could provide the supply.

So, there are three instances.

• (1235)

Hon. John McCallum: Finally, on the fairness monitors, I gather that the program was established in 2005, but I believe similar things happened before then. What was the change? How did things change in 2005?

Ms. Michelle d'Auray: The reason this was established as a program per se and given to the sector that Ms. Glover heads is that the fairness monitoring was done on an ad hoc basis and the contracts were issued by the branches that were actually undertaking the activity. We wanted to strengthen and separate the functions from the actual procuring or leasing or contracting sectors in order to be able to create an additional level of independence.

The program was established as a program as opposed to an ad hoc series. There was a structure put around it—criteria, processes,

publication of the report. It was really structured as a separate stand-alone program and was done with our colleagues in the integrity branch.

Hon. John McCallum: Thank you.

The Chair: Very good, John, thank you. That's five minutes and thirty seconds.

Next for the Conservatives is Mr. Jacques Gourde.

[*Translation*]

Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC): Thank you, Mr. Chair.

My thanks to the witnesses for joining us this morning.

When big companies, those employing between 1,000 and 2,000 employees, provide services to the Government of Canada and are tainted by allegations or charges or are found guilty because of the actions of one, two, three or four individuals, do they run the unfortunate risk of losing all their contracts?

Ms. Michelle d'Auray: The measures we have come into play when the offences are committed or businesses or the heads of businesses are convicted. The measures do not affect the employees as such.

But, as my colleague indicated, if the employees of a company are found guilty of various offences, we can and do increase our vigilance towards the activities of those companies even if the company is not prohibited from doing business with the Government of Canada, or at least with Public Works and Government Services Canada.

We take additional measures in terms of monitoring and auditing. We have also, on several occasions, asked companies to adopt our codes voluntarily and to take the steps that we recommend.

Mr. Jacques Gourde: Could the new integrity framework end up restricting the number of companies able to provide specialized services? For some services, we know that very, very specialized people are required and there are not necessarily a lot of suppliers because the market may not be big enough to support that kind of work. Could that complicate things?

Ms. Michelle d'Auray: We have chosen to solve that problem with what we call a public interest exception.

If we find ourselves in an emergency situation, if it is a matter of national security or if a single supplier is available in a given area, we can, in those circumstances, award a contract, even if the company should not be able to do business with the government under the provisions we have put in place. However, they are very specific situations. We do that on a case by case basis.

As I was explaining earlier, since the implementation of the enhanced integrity provisions in November, we have awarded contracts to companies found guilty of breaches of our code on three occasions. We did so either because there was only one supplier—and the product, the service or the item, was essential—or because signing a contract with a company was essential for health and safety reasons.

Mr. Jacques Gourde: A supplier getting a contract from Public Works and Government Services Canada can sometimes subcontract work to a company that is no longer on the list and that can no longer submit bids. Are you able to monitor that. Is that possible?

• (1240)

Ms. Michelle d'Auray: When we sign contracts with companies, they have to require their subcontractors to comply with the same provisions that they have to comply with themselves. However, since we sign the contract with the main company, we trust that company to follow up and be responsible for the integrity of their suppliers. If we find, as the result of an investigation or of our monitoring, that there really is a problem with a subcontractor, we will alert the company and ask them to cease the activity. However, in all cases, the responsibility rests fully on the shoulders of the supplier with whom we have signed the contract.

Mr. Jacques Gourde: What happens if all those subcontractors have the same supplier for some basic material? In construction, that sometimes happens. In a given area, one person or one company can have a monopoly on certain construction materials. It does not matter who you are dealing with, you are going to end up indirectly dealing with that company, and it will supply the goods or the service.

Ms. Michelle d'Auray: To my knowledge, that has never happened with a contract signed by Public Works and Government Services Canada. If it were to happen, we have very specific and rigorous follow-up procedures.

Perhaps I can ask Ms. Glover to give you an example of the kinds of steps that we would take if something like that were to happen.

[*English*]

Mrs. Barbara Glover: If there were a situation where we had to, for reasons of public interest, contract with a company that had a conviction, perhaps about which we had concerns, we would put in place a range of mechanisms. We would ensure that any amendments were done scrupulously, that every invoice was done properly, that the company itself, as it engaged with us, documented everything, again I'll say scrupulously. We would do that in order to ensure that while we got the contract done—because there's a public interest to doing that—it was done properly and it was carefully monitored to ensure good value for money and to meet taxpayers' interest.

The Chair: That concludes your time, Monsieur Gourde. Merci.

That concludes our first round of questioning.

I'd like clarification on a question that was put to virtually the same panel on May 21. We received a written answer to a question that requires a little more clarification. The question was whether Envoy would be allowed to compete and bid on the next relocation contract, or would they be precluded because of the appeal that's under way.

The response we have is one sentence. It says, "The next competitive solicitation process for the integrated relocation program will be open to all potential bidders."

Does that include Envoy, or will Envoy be precluded from pre-qualification?

An hon. member: [*Inaudible—Editor*]

The Chair: I'm sorry. Am I using the wrong...?

Ms. Linda Duncan: Yes. They're the good guys.

The Chair: I'm wondering whether Envoy will be allowed to bid again, or will it be precluded because the appeal is currently in effect in the courts?

Can you answer that cleanly, yes or no? We don't have very much time.

Ms. Michelle d'Auray: If they choose to bid, they will be able to bid.

The Chair: Perfect. That's exactly what I wanted to know.

Next, is SNC-Lavalin on any qualified bidders list for procurement contracting with the Government of Canada?

Ms. Michelle d'Auray: Yes, Mr. Chair.

We have a number of contracts with SNC-Lavalin. We have a number of major contracts, primarily in what we call the operation and maintenance of our federal properties. There are a number of other contracts that Public Works has issued on behalf of other departments.

So yes, there is a range of contracts with SNC-Lavalin.

The Chair: Are they eligible by virtue of a public interest override, or did they receive a pardon, as it were?

Ms. Michelle d'Auray: The company has not been convicted, nor have its directors been convicted of any of the offences. While some former members might have been charged, there are no convictions.

However, the company has willingly integrated all of our integrity provisions into its current contracts. As I mentioned in my remarks, our integrity framework is not retroactive, but the company has in fact integrated our framework and the list of offences into their existing contracts.

• (1245)

The Chair: So that's okay with everybody.

Okay. Mathieu Ravignat, you have five minutes.

Ms. Linda Duncan: I had a follow-up question first, and then over to Mathieu.

I have to say, Mr. Chair, that I'm deeply troubled by the response that if you break the law and you already have contract, you still get hundreds of millions of dollars of taxpayer's money. It sounds like there is something very seriously wrong with the system, and that's why I asked the question earlier.

Instead of relying on this non-binding code of conduct, unless it's attached to a contract, surely the government must have mechanisms available where through regulation or amending the legislation they can make these provisions applicable in all cases. If you've already signed a contract and you are then convicted of fraud or bribery or collusion or drug trade, I find it unbelievable that you then say, "Oh, well. Too bad. We will monitor you in the future."

I wonder if you can speak to that. It doesn't give a whole lot of confidence that there is any kind of severe accountability if you break the law when you have a big hundred-million-dollar contract with the Government of Canada.

Ms. Michelle d'Auray: If the law is broken and one of the offences is covered under our measures, then you cannot do business with the government or we terminate the contract for default. The measure that we have is to terminate contracts or to not enter into contracts. The other convictions are related to the activities—the convictions or the crimes that have been committed—but if you have been convicted of any of the offences on the list, then you cannot do business with us.

Ms. Linda Duncan: That varies from what you said in your opening statement, that the provisions aren't retroactive and that if they break the law while they have a contract you'll monitor them.

I'll go over to Mathieu.

Ms. Michelle d'Auray: If I may, Mr. Chair, I did say in my remarks that there are a list of offences that were put in place in 2007. We did add some, and we have refreshed and updated most of the standing offers and supply arrangements. There are only a small number that have not yet been refreshed for the purposes of integrating our framework.

The recent changes do not apply retroactively. Nonetheless, we issue contracts on a fairly regular basis, and as these new contracts come up and convictions are made around these offences, they will not be able to do business with the government.

Mr. Mathieu Ravignat (Pontiac, NDP): Thank you for that.

It's clear that the fairness monitoring process is not working the way that it should. In 2009, when we were talking about the relocation program—and I'll remind you that we were talking about billions of dollars—it seemed not to have worked then. All of this is fine, but if there is political involvement in these contracts then you can have all the regulations in place that you'd like.

We know that Minister Toews, for example, on the 2009 relocation programs, asked to see the statement of requirements. Minister Paradis went to present this to cabinet and was told not to prolong the bid process.

We can learn a lot from the past. Do you know of any other ministers who were involved in that 2009 IRP bid process?

Ms. Michelle d'Auray: I can actually speak to the 2009 process since I was at the Treasury Board Secretariat at the time. I can assure you that the minister did not get involved in the selection or any of the other elements related to the process of the contract. We were under tight timelines and there was in fact interest in getting this done within the timelines that we were given.

Mr. Mathieu Ravignat: So why not prolong the bid process?

Ms. Michelle d'Auray: Because the—

Mr. Mathieu Ravignat: There was only one company that was actually allowed to bid. So why not prolong it in order to ensure competition?

Ms. Michelle d'Auray: The process was followed in order to be able to meet the commitment of the government to, in fact, the public accounts committee at the time, coming out of the Auditor General

report that the contract would be in place by 2009. We met that commitment.

● (1250)

Mr. Mathieu Ravignat: Who made the decision not to prolong the bid?

Ms. Michelle d'Auray: That was in fact the recommendation of officials because we were—

Mr. Mathieu Ravignat: Which officials?

Ms. Michelle d'Auray: Officials of the three client departments, and I was from one of the client departments.

Mr. Mathieu Ravignat: So when Paradis went to cabinet to present the possibility of prolonging this, cabinet did not make the decision to not prolong the bid process.

Ms. Michelle d'Auray: I am not in a position, as you know, to talk about what happens in a cabinet process.

Mr. Mathieu Ravignat: So do you know why Minister Toews was interested in this particular program at the time?

Ms. Michelle d'Auray: What I can say is that in fact the government had made a commitment that the contract would be in place by 2009. The government at the time had made that commitment and we were following that commitment, making sure that—

Mr. Mathieu Ravignat: So will you be correcting the situation for the next contract? Or will you be just renewing the contract to the same company, once again, as was done in 2009, by limiting the amount of time for the bid process?

Ms. Michelle d'Auray: As my colleague Mr. Sobrino indicated to you when he appeared before the committee, we are launching the process now, and we will in fact have a fairly robust engagement with industry.

One of the questions we are asking and will be asking industry... We will take the time necessary to re-procure and have a competitive process, but we are also interested in hearing from suppliers in the industry whether there are different ways we can deliver this program.

The Chair: It's a little over your time.

Dan Albas will be our last questioner, and then I remind committee members that we need a few minutes to approve some budgetary issues regarding bringing in a future witness.

So Dan, you have five minutes, maximum, please.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair, and I appreciate the witnesses and their testimony here today.

I do think there have been some concerns expressed regarding the fairness monitor and I do know that much of the testimony we've heard already today has outlined some of it. But I'd like to sum up some of it and maybe ask a few questions to add to it.

Can you tell us how the fairness monitor for the 2009 IRP contract was selected?

Ms. Michelle d'Auray: I will turn to my colleague.

Mrs. Barbara Glover: The 2009 contract was an RFP, a request for proposals, a competitive process.

Mr. Dan Albas: Okay, great.

Can you tell us about the terms under which the fairness monitors are engaged?

Mrs. Barbara Glover: The terms and conditions seek applicants, if you will, who are knowledgeable, who can provide an objective view on whether the processes followed were fair, open, and transparent, and those are set out and described. They are required to observe all parts of the engagement of, say, a contracting process, to participate in all discussions that are going on throughout the process, and to come to a conclusion, again, about whether a process is fair, open, and transparent according to certain criteria. Of course, they're required to attest to that and put their signature to a report, which we publish.

Mr. Dan Albas: Okay.

We've heard some concerns about the current model. To me, you either have an independent fairness monitor outside of government that can put forward its own people and experts in their field and bid on a competitive process, or the alternative is to have it somewhere within the government, whether it be independent or part of a department. To me, there are always going to be concerns regardless, because if they're within government, they could say, well, then, it's not really a truly independent process.

Is that correct?

Ms. Michelle d'Auray: I think this is why we use independent third parties. They are selected as a result of an evaluation process, which is not run by the two major branches that oversee processes, whether real property transactions or acquisitions. The departmental oversight branch is running the selection process completely separately and as a result of that, the people we contract with are, in fact, selected based on a range of criteria. They are independent of the process.

As I mentioned earlier, the suppliers and the various stakeholders engaged in those processes have direct access to the fairness monitor. As my colleague indicated, the report that is produced by the fairness monitor is signed off by the fairness monitor, not by the department, and the report is published and posted on our website.

•(1255)

Mr. Dan Albas: Further to that, obviously there are terms and conditions that they have to meet and follow. They submit a final report that basically concludes their obligations to the government under the processes that they were procured under. That's my understanding. Is that correct?

Ms. Michelle d'Auray: That is indeed correct.

Mr. Dan Albas: Now, the situation we have here is that you have a demographic issue in that lots of people are retiring. I would imagine that we have people retiring in government, and we have people retiring in these companies. It's perfectly fair to say that it's very difficult to keep that kind of broad range of skills and experience, other than for the final report. I would say that regardless of which model you use, you would still have those basic challenges, would you not?

Ms. Michelle d'Auray: In many instances, as we do for a lot of reporting and third-party assessors that we contract with, we use their reports. But once their reports are completed, they have essentially completed the work for which they were contracted. Once the report is posted and the assessment is completed, essentially there is no further relationship or no further work to be done. The report stands as the report of the process.

Mr. Dan Albas: Now, further to Mr. Ravnat's line of questioning, I was a municipal councillor and we had procurement processes in place. I remember for certain procurements, if, politically speaking, we asked to prolong a process, that could actually open the process up to lawsuits as well. Is that not true?

Ms. Michelle d'Auray: I would say the way we run our processes, there is no ministerial involvement. When there is a commitment to meet a timeline for a process, we are encouraged to meet the timeline. But in terms of our procurement—and I don't want to comment on what other jurisdictions do or don't do—there is no ministerial involvement.

Mr. Dan Albas: I think, Mr. Chair, that's where I'm cut off?

The Chair: You have a few seconds.

Mr. Dan Albas: Again, a good process has a start and a finish. You open the bids, bids come in, and then you close the process. Then you decide through your regular mechanisms. I can understand that there are some issues here, but I think we have one of the strongest processes in the world. In fact, I checked the OECD website, Mr. Chair. Canada ranks quite highly in terms of transparency and proper process.

Thank you again, witnesses. I appreciate your being here.

The Chair: On that note, we do have to suspend the meeting briefly. We thank our witnesses for their attendance.

I will ask committee members to please hold their seats for two or three minutes of committee business. We'll ask anyone who shouldn't be in the room at an in camera meeting to please clear the room.

[Proceedings continue in camera]

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>