

BACKGROUND

Accountability at Risk?

The Conservative Government was elected in January 2006 with a clear mandate to restore accountability in government. The first piece of legislation by the new government was the comprehensive Federal Accountability Act, which was committed to promoting fairness, openness and transparency in the government bidding process.

Indeed, the Honourable Michael Fortier, Minister of Public Works and Government Services Canada (Public Works), stated in a recent press release on February 22nd, 2007: **"It is imperative that Canadians have confidence in the fairness, openness and transparency of the government's procurement activities."**

TPG completely agrees which is why we are greatly concerned that, in the case of the ETS RFP, the procurement protocol has strayed from the government's commitment to accountability, openness and fairness.

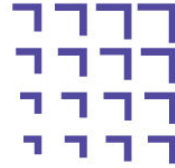
Conflict of Interest

Minister Fortier told the House of Commons Standing Committee on Government Operations and Estimates on June 8th 2006, that a new Code of Conduct for Procurement **"will consolidate all existing conflict-of-interest and anti-corruption measures into a comprehensive and transparent statement of expectations for government employees and suppliers alike."**

The government is developing a draft Code, which has specified that public servants "must avoid or withdraw from activities or situations, including procurement actions, which **would place the public servant in real, potential or apparent conflict of interest** with his or her official duties due to ownership of assets, liabilities, family relationships or other such circumstances."

However, TPG is aware that:

- Several PWGSC officials have had close ties with an organization that is now favoured to win:
 - Mr. Jirka Danek, immediately prior to his June 2006 appointment as Director General of Products and Services within ITSB (the organization which issued the ETS RFP) was Chairman and CEO of an Ottawa-based IT company called AvalonWorks. He continues to be the largest shareholder in AvalonWorks. AvalonWorks is currently a subcontractor to TPG, but were informed that they could not be included in the TPG proposal for ETS due to Mr. Danek's potential conflict of interest. This company would lose 70% of its revenue if TPG is awarded the ETS contract.



Fairness, Openness and Transparency

Minister Fortier has acknowledged the need to strengthen the integrity and transparency of procurement transactions. He assured the Government Operations and Estimates Committee on June 8th 2006: **"We are the Government's experts in procurement, and we will lead the way in reforming the process to ensure it is fair, open and transparent."**

On February 9th 2007, Minister Fortier stated that **"Canadians, rightly so, insist on transparency when governments spend their hard earned tax dollars."**

TPG agrees with the Minister's objectives, but, a number of events in this RFP process raise concerns:

- During the RFP process, TPG submitted a number of questions asking for more clarity in the criteria by which proposals would be evaluated. Responses from PWGSC did not improve clarity.
- Despite TPG being the lowest bidder (by a substantial margin in the tens of millions of dollars) and information pointing to the fact that the initial technical evaluation was extremely close, the contract, following an unusual process that saw the evaluations being looked at again, there are strong indications that the contract may be granted to another company.
- The clearly defined process was that that the technical evaluation would occur prior to the financial evaluation. This happened and TPG appeared to have been the winner. The additional process of looking at the evaluations again, which ran against the defined process, seems to have changed the result. The normal process is to completely finalize the technical evaluation prior to the financial evaluation, to ensure that the technical scores are not adjusted to arbitrarily select the winners after the financial proposal.
- Information given to TPG indicated that the process where scores were looked at again was done once the result for the first technical and the financial evaluations were made known.
- The process was completely inappropriate and, most probably, contravenes international trade agreements by which Canada is bound.

Due process, as advocated by Minister Fortier and the Conservative Government has not been followed.