

## CABINET SUBMISSION

**Ministry Document #:** 34193

**Minister:** The Honourable Sandy Santori  
Minister of Management Services

**Identifier Number:**

**Date:** July 18, 2001

**Title:** Open tendering on government contracts.

**ISSUE:**

Cabinet is requested to approve the Ministry's proposal to implement the 90 day commitment to:

*“restore open tendering on government contracts to allow fair competition for businesses and provide better value to taxpayers”.*

During the first 90 days in office, Government can address many significant barriers to open tendering and start the process for improvement in other areas, both within core government and the broader public sector. The Ministry of Management Services proposes the following actions to Cabinet:

- Continue with the wind up of Highway Constructors Ltd. (HCL) to eliminate barriers to open tendering of highway construction.
- Repeal the *Skills Development and Fair Wage Act*, which prescribes the wages which must be paid on construction projects over \$250,000.
- Terminate the Community Social Services Successorship Accord, which requires successor organisations to assume predecessor union agreements and staff.
- Terminate as quickly as possible the New Forest Opportunities Limited program of the Jobs and Timber Accord which applies HCL-type provisions on silviculture and land-based forestry contracts in coastal BC.
- Immediately terminate the Policy Accord on Government Training Expenditures, which directs public sector training business to public sector institutions in certain limited situations. In 2002/03, eliminate the so-called “College Envelope” that directs training funds from the Ministry of Human Resources to the public post-secondary sector.
- Immediately consolidate posting of government bids on a single bid site (BC Bid) for easier access by suppliers.
- Extend the procurement provisions of the Agreement on Internal Trade (AIT) to Crown corporations and the Municipalities, Academic Institutions, Schools, Social Service Agencies, and Health (MASSH) sectors, to reduce inter-provincial trade barriers, as they are not currently subject to these provisions.

- Immediately develop benchmarks for measuring success/compliance, identify required training and education for employees, and commence a process to identify procurement legislation and related policy which will require modernization in the period beyond the 90 day timeframe.

## **BACKGROUND:**

Restoration of open tendering is an important short term (90 day) commitment of the Government's New Era Plan. It is closely linked to other 90 day commitments, such as the "fixed wage" legislation in public construction projects.

On the surface, the BC government presently has a good internal foundation to support the restoration of fair and open competition:

- BC Bid, and other sites, for electronic advertisement of public sector bids.
- A Treasury Board policy framework, which clearly requires open and fair tendering.
- The Purchasing Commission, which is committed to fair and open access.
- Legislation which requires public tendering for highways construction.

Within core government, several barriers exist, which discourage or prevent full competition, and consequently increase the costs of government purchasing to taxpayers:

- Specific barriers contained in legislation and formal agreements, which can be addressed quickly.
- Specific barriers in the form of outdated purchasing legislation and policy, which will need greater time to evaluate and amend.
- Systemic barriers arising from fragmented delivery of purchasing activities, lack of management information, and need for purchasing training and education on a broad scale.

There is evidence that the BC public sector can, and must, do a better job of open tendering. For example:

- HCL restrictions in building the Island Highway.
- The *Skills Development and Fair Wage Act*, which requires companies to pay fixed wages on government construction work.
- The March 2001 Auditor General's report which found that four of the five ministries reviewed were "not awarding the majority of their management consulting contracts in a fair and open manner".
- 103 notices to direct award posted by ministries in the first quarter of 2001, for a total of \$25 million in spending.

In the broader public sector, exclusion of the Crown corporations and MASSH sectors from coverage by the AIT is also a barrier to more open tendering. The AIT is an agreement between Canada and all the provinces to remove artificial trade barriers between provinces.

It is recognized that a complete and detailed tendering process may not always be the best choice, or even possible; for instance in situations involving confidential work, emergencies, some community social contracts, and when only one qualified source exists. In addition, there is an “efficiency” limit to open tendering, where the costs exceed the benefits. This was recognized in the Auditor General’s report on management consulting contracts which recommended that “Government should review the \$25,000 threshold and the rules surrounding the exceptions to competitive awarding, to assess whether they lead to best value and represent a reasonable balance between administrative efficiency and fairness.”

### **GOVERNMENT VALUES AND PRIORITIES:**

As part of its 90-day commitment to the public, Government has stated that it will:  
“Restore open tendering on government contracts to allow fair competition for businesses and provide better value to taxpayers”;  
“Repeal the NDP’s fixed wage legislation that has added huge costs to the taxpayers on public construction projects”; and  
“Eliminate the HCL union-only hiring-hall requirement on highway construction projects and government sponsored silviculture contracts”.

### **FISCAL MANAGEMENT CONSIDERATIONS:**

It can be anticipated that restoring open tendering on government contracts will result in cost savings to government. The timing and extent of those cost savings will be dependent on the term remaining in contracts that have already been entered into and the ability to negotiate amendments to existing contracts. It is not possible at this time to assess the total fiscal impact on government.

### **LEGISLATIVE AND LEGAL CONSIDERATIONS:**

Legislation will be required to repeal the *Skills Development and Fair Wage Act*.

Legal advice will provide guidance on the repeal of the *Skills Development and Fair Wage Act*, and the termination of the Community Social Services Successorship Accord, the New Forest Opportunities program, and the Policy Accord on Government Training Expenditures. Existing valid contracts that have been entered into as a result of these initiatives will remain in effect.

## **PROPOSAL:**

The Ministry of Management Services has identified the following proposals to enable Government to meet its commitment to restore open tendering and achieve the benefits of fair competition for both businesses and taxpayers. The Ministry will work co-operatively with other agencies to achieve the desired results.

### **1. Continue with the wind up of Highway Contractors Limited (HCL)**

HCL will wind up its activities immediately and new tenders for highway construction will shortly be free of HCL constraints. This will effectively accomplish the desired benefits for open tendering. Opportunities will be sought in existing contracts to realize immediate cost savings where possible. This initiative is part of the 90 day New Era agenda.

### **2. Repeal the *Skills Development and Fair Wage Act***

The *Skills Development and Fair Wage Act* applies to public sector construction contracts over \$250,000, and requires contractors and subcontractors doing construction work on those projects to pay wages and benefits established by the regulations, as well as to employ accredited tradespersons or registered apprentices.

The Ministry of Skills Development and Labour will undertake the repeal of the *Skills Development and Fair Wage Act*. This action will also achieve the desired benefits for open tendering. Opportunities will be sought in existing contracts to realize immediate cost savings where possible.

### **3. Terminate the Community Social Services Successorship Accord at the earliest opportunity**

The Successorship Accord commits the government to ensure, when entering into a contract for services with a “new agency”, that where the new agency is providing substantially the same service provided by a former agency, it will agree to recognize the applicable union as the bargaining agent for the employees and will agree to be bound by the collective agreement negotiated by the union and the former agency.

- This Accord creates real barriers to open tendering and availability of service for clients. There are currently situations where ministries have been unable to replace unionized contractors who have decided to end their contractual relationships with government.
- Termination of this Accord would remove the current restrictions on development of valid business opportunities.
- Due to the complexity of this accord, careful consideration will be given to the impact this may have on existing labour agreements and other commitments.

#### **4. Terminate the New Forest Opportunities Program.**

The Jobs and Timber Accord required the creation of New Forest Opportunities Limited (NewFO), a HCL-type “forest worker agency” designed to be the employer to provide workers on Forest Renewal BC (FRBC) funded, land-based activities in Coastal BC. FRBC is initiating a review of all its initiatives and a report is to be completed by September 30/01. New Forest Opportunities Limited will be wound up immediately.

#### **5. Terminate the Policy Accord on Government Training Expenditures**

The Policy Accord requires that, for direct awards, government managers “first consider” using the public post-secondary education system to meet existing training needs. For tendered training contracts, when a public institution’s proposal meets or exceeds other proposals, the public institution must be given “first opportunity” to provide the service.

The agencies responsible for this Accord are PSEC and the Ministry of Advanced Education. The Ministry of Management Services is working with these two agencies, and with PSERC. PSEC will terminate the Training Accord within the 90 day period.

#### **6. Immediately consolidate posting of government bids on a single site (BC Bid) for easier access by suppliers**

This fulfills the 90 day New Era commitment to: *"use on-line procurement technology to save costs and maximize taxpayers' value-for-money on all major government purchases"*.

- This reduces the effort required by vendors to search out government business opportunities, ensures that all government requirements are competed openly, and meets core government’s advertising obligations under the AIT.
- MASSH sector and Crown corporation bids could be included, which would provide assurance that BC’s AIT obligations were being met across the broader public sector.
- There are presently three official bid sites in core government – managed by the Purchasing Commission, the Ministry of Forests and the Ministry of Transportation. Forests is currently merging their site with the Commission’s site, BC Bid. The Commission is developing a seamless link to Transportation’s private sector-owned bid site, which has more functionality for handling construction tendering.
- However, there are large numbers of bid sites in the Crown corporation and MASSH sectors. The Crown sites are not consistently linked to BC Bid, and the MASSH sector sites tend to be rudimentary.

Within the 90-day period, the Ministry of Management Services will complete the consolidation of access to all core government bids on BC Bid.

Following the 90-day period, our Ministry will direct the Crown corporation and MASSH sectors, to develop an approach for fully co-ordinated electronic access to all public sector bids.

**7. Extend the procurement provisions of the Agreement on Internal Trade (AIT) to Crown corporations and the Municipalities, Academic Institutions, Schools, Social Service Agencies, and Health (MASSH) sectors, to reduce inter-provincial trade barriers, as they are not currently subject to these provisions**

This fulfills another 90 day New Era commitment to: "push to eliminate inter-provincial trade barriers".

- BC has not fully supported the spirit and intent of the AIT, which is to reduce or eliminate barriers to the free movement of goods and services within Canada.

**8. Immediately develop benchmarks for measuring success/compliance, identify required training and education for employees, and commence a process to identify procurement legislation and related policy which will require modernization in the period beyond the 90 day timeframe**

- Long term success at maintaining effective competitive practices requires more systemic change: modernisation of procurement legislation and related policy, extensive training and education of employees, and a more effective compliance model.
- Within core government, construction (apart from the legislation issues identified in proposals 1 and 2 above) and goods purchasing are reasonably well managed. Services purchasing is more problematic.
- The current status of purchasing activities with the Crown corporation and MASSH sectors is not known, but is likely to vary considerably from organization to organization and from sector to sector.

Within the 90 day period, the Minister of Management Services will announce further plans to pursue procurement reform within core government. The proposal will also establish benchmarks against which the success of these initiatives may be assessed.

Following the 90-day period, the Ministry will begin consultations with the Crown corporation and MASSH sectors to develop plans for expansion of procurement reform into those areas.

**CONSULTATIONS:**

**1. PUBLIC INCLUSION**

A communications plan will be developed with the assistance of the Public Affairs Bureau.

**2. INTER-MINISTRY, INTER-AGENCY AND INTER-GOVERNMENTAL CONSULTATION**

The Ministry has consulted with affected ministries, and will continue to work with those ministries to ensure that the open tendering commitment is met.

**RECOMMENDED DECISION:**

It is recommended that Cabinet approve the Ministry's proposal.

**SIGNATURE:**

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Sandy Santori  
Minister of Management Services