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No Bang for the Buck: Military contracting and public accountability

By Steven Staples, CCPA Research Associate and Director of the Rideau Institute

Main Findings

1. More than 40% of military contracts are “non-competitive,” and the use of uncompetitive contracting is on the rise.

A study using the Business Access Canada (formerly Contracts Canada) public database of federal contracts awarded by the Department of Public Works and Government Services for the Department of National Defence (DND) found the following:

- More than 40% of DND contracts in FY2006-07 reported by Business Access Canada were classified as “non-competitive.”
- The percentage in value of all DND contracts classified by Business Access Canada as “non-competitive” more than doubled over two years between FY2004-05 and FY2006-07.

2. The legitimacy of the military procurement system is in serious doubt.

- More than \$16 billion in major military equipment programs have been designated for the Advance Contract Award Notices (ACAN) or a similarly limited tendering process, including a controversial \$3.4 billion strategic airlift contract that was awarded to Boeing in February, 2007.
- The Treasury Board defines the use of ACANs to pre-select military equipment suppliers as

competitive, but the Auditor General disagrees, arguing “it is not a competitive process.”

- Gordon O’Connor’s work as a lobbyist for 28 firms, including five of the world’s top 10 defence contractors, and almost all seeking government contracts during the period just prior to his appointment as Defence Minister, compromises his ability to instill public confidence in the military procurement system.
- Several Canadian and U.S. experts agree that non-competitive procurement processes result in increased military equipment costs and fewer industrial regional benefits, and that increased parliamentary oversight means soldiers “get better, more effective equipment, sooner and cheaper.”

Summary of Conclusions

- The government should not sign any new military contracts valued at over \$100 million (Major Crown Projects) pending reports by the Auditor General and the Commons Standing Committee on National Defence, expected by the end of the year.
- Ministers involved in defence procurement, especially the Minister of National Defence, and procurement-related public servants should have at least a five-year separation from any firms supplying the government if they were employed by these firms or lobbied on their behalf

- The Minister of National Defence should be given clear responsibility for defence procurement.
- A new parliamentary standing committee should be established with responsibility for defence procurement to provide greater oversight and transparency in military contracting.

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Introduction

Canada is currently undergoing a large military buildup, as billions of dollars are being spent on new military equipment for the Canadian Forces. Amplified government defence spending results in increased lobbying efforts as military equipment companies attempt to profit from the swell in government spending.

The practices of defence contracting are receiving heightened attention from the public and the media, as government officials award contracts where competing players and special interests vie for significant amounts of money. A sampling of recent media reports reveals a military procurement process steeped in departmental secrecy and charges that multi-billion-dollar contracts are being steered toward pre-selected contractors:

- The Department of Public Works rejected a challenge from a firm to the government's stated intention to purchase 16 *Chinook* helicopters from American manufacturer Boeing.¹
- European aircraft manufacturer Airbus Military challenged the government's intention to purchase four C-17 *Globemaster III* strategic-lift aircraft for \$3.4 billion, also made by Boeing. Airbus Military argued that the government's requirements "exclude a competition."²
- Snow Aviation International, a U.S. company, was rejected as a qualified bidder for the \$4.9 billion contract to replace Canada's tactical Hercules transport aircraft, despite the company's claim that it can refurbish and improve existing aircraft at less

than half the cost of buying new C-130J aircraft built by U.S. rival Lockheed Martin, the government's preferred supplier.³

- A Department of National Defence report, acquired through the Access to Information law, found that the C-130J aircraft had "significant operational limitations," and noted that correspondence from earlier purchasers is "almost universally negative." Ignoring this, the government chose the Lockheed Martin-built aircraft over others.⁴

- The Department of National Defence has reclassified documents pertaining to the purchase of the Mercedes Benz "G-Wagon" as secret, with limited access to information on the three-year-old \$220 million contract that was previously available publicly.⁵

- Spanish aircraft maker EADS-CASA claims that the competition for a \$3.4 billion contract for fixed-wing search-and-rescue aircraft has been tilted in favour of another Italian aircraft built by Lockheed Martin and Alenia Tactical Transport Systems. DND is only considering the bid from Lockheed Martin-Alenia.⁶

These reports detailing a lack of a fair and transparent process to determine the best equipment for the Canadian Forces are disquieting. The controversy has raised the interest of the all-party Parliamentary Standing Committee on National Defence, which held hearings on defence procurement in early 2007.⁷

While it can be expected in the competitive nature of defence contracting that some companies may complain about the winners, the repeated incidence of such complaints indicates that this is not a matter of "sore losers," but a trend within the government system that is skewing the important military contracts to pre-selected winners. A review of the process indicates that the current system requires a substantial overhaul in order to ensure transparency, fairness, and quality of product.

The Position of the Minister of National Defence

A member of Parliament in the Ottawa-area riding of Carleton-Mississippi Mills since June, 2004, Gordon O'Connor was the Opposition Critic for Defence

Table 1 Firms represented by Gordon O'Connor, October 1996–February 2004

Client	Period	Location	Subject matter	Name or description of gov't contract	Gov't institution
PMG TECHNOLOGIES	25/11/2003 to 23/02/2004	Blainville, Quebec, Canada	Transportation	Vehicle testing	Public Works and Government Services Canada, Transport Canada
STEWART & STEVENSON TVS, LP	29/08/2003 to 23/02/2004	Sealy, Texas, USA	Defence, Government Procurement	Military trucks	Federal Office of Regional Development—Quebec, Atlantic Canada Opportunities Agency, Industry Canada, National Defence, Public Works and Government Services Canada, Treasury Board of Canada, Western Economic Diversification Canada
ALENIA MARCONI SYSTEMS SPA	08/07/2003 to 23/02/2004	Dumferline, Fife, Scotland, UK	Defence, Fisheries	Projects involving systems integration, simulation & training	Fisheries and Oceans Canada, Industry Canada, National Defence, Public Works and Government Services Canada
MGM COMMUNICATIONS	07/12/2002 to 23/02/2004	Calgary, Alberta, Canada	Advertising	Advertising contracts [seeking business opportunities for client]	Citizenship and Immigration Canada, Indian and Northern Affairs Canada, Industry Canada, National Defence, Public Works and Government Services Canada, Revenue Canada, Royal Canadian Mounted Police, Solicitor General Canada
MARCH NETWORKS	27/02/2002 to 08/09/2002	Ottawa, Ontario, Canada	Government Procurement	Surveillance devices [seeking business opportunities for said client]	Correctional Service of Canada, Fisheries and Oceans Canada, Foreign Affairs and International Trade, Health Canada, Industry Canada, National Defence, Public Works and Government Services Canada, Revenue Canada, Royal Canadian Mounted Police, Solicitor General Canada, Transport Canada
BROWN & ROOT SERVICES	19/02/2002 to 01/03/2003	Arlington, Virginia, USA	Government Procurement	Outsourcing of facilities and capabilities [seeking business opportunities for said client]	Federal Office of Regional Development—Quebec, Atlantic Canada Opportunities Agency, Industry Canada, National Defence, Public Works and Government Services Canada, Treasury Board of Canada, Western Economic Diversification Canada
BENNETT ENVIRONMENTAL INC	19/02/2002 to 22/02/2002	Oakville, Ontario, Canada	Environment	Remediation contracts [seeking business opportunities for said client]	Environment Canada, Indian and Northern Affairs Canada, National Defence
AIRBUS MILITARY	01/04/2001 to 23/02/2004	Blagnac, France	Defence, Government Procurement	Air transportation [seeking business opportunities for said client]	Federal Office of Regional Development—Quebec, Foreign Affairs and International Trade, Atlantic Canada Opportunities Agency, Industry Canada, National Defence, Privy Council Office, Public Works and Government Services Canada, Treasury Board of Canada, Western Economic Diversification Canada
SYSCON JUSTICE SYSTEMS LTD.	21/06/2001 to 08/01/2001	Richmond, BC, Canada	Government Procurement, Justice and Law Enforcement	To assist Syscon Justice Systems Ltd. With procurement opportunities within the federal government	Industry Canada, Justice Canada, Public Works and Government Services Canada, Solicitor General Canada

Table 1 (continued) Firms represented by Gordon O'Connor, October 1996–February 2004

Client	Period	Location	Subject matter	Name or description of gov't contract	Gov't institution
NORTHERN LIGHTS AEROBATIC TEAM	25/09/2000 to 23/02/2004	Montreal, Quebec, Canada	Defence, Transportation	Aircraft services	Industry Canada, National Defence, Public Works and Government Services Canada, Transport Canada
GALAXY AEROSPACE COMPANY	25/09/2000 to 09/05/2001	Arlington, Virginia, USA	Defence, Transportation	Aircraft services	Industry Canada, National Defence, Public Works and Government Services Canada, Transport Canada
TIBBETT & BRITTEN GROUP	15/10/1999 to 01/03/2003	Etobicoke, Ontario, Canada	Government Procurement	Supply chain project (to provide for the transfer of goods)	Federal Office of Regional Development—Quebec, Fisheries and Oceans Canada, Atlantic Canada Opportunities Agency, Indian and Northern Affairs Canada, Industry Canada, National Defence, Public Works and Government Services Canada, Western Economic Diversification Canada
BOVAR INC	21/06/2001 to 27/03/2000	Calgary, Alberta, Canada	Government Procurement	Pursuing environmental business opportunities (waste management)	Environment Canada, Indian and Northern Affairs Canada, National Defence, Natural Resources Canada, Public Works and Government Services Canada
STN ATLAS ELEKTRONIK GMBH	01/12/1999 to 23/02/2004	Bremen, Germany	Government Procurement	National Defence procurement	Federal Office of Regional Development—Quebec, Atlantic Canada Opportunities Agency, Industry Canada, National Defence, Public Works and Government Services Canada, Western Economic Diversification Canada
IRVIN AEROSPACE	10/07/1998 to 09/05/2001	Fort Erie, Ontario, Canada	Internal Trade	Resolve trade issue: renewing export licence	Foreign Affairs and International Trade, National Defence
GOLDER ASSOCIATES LTD	22/07/1998 to 03/02/2000	Ottawa, Ontario, Canada	Environment, Government Procurement	Environmental contracts	Environment Canada, Fisheries and Oceans Canada, National Defence, Natural Resources Canada, Public Works and Government Services Canada, Revenue Canada
IRVIN AEROSPACE	18/03/1998 to 06/12/1998	Fort Erie, Ontario, Canada	Defence, Government Procurement, Industry	Parachute contracts	Industry Canada, National Defence, Public Works and Government Services Canada
ORION BUS INDUSTRIES	12/08/1997 to 03/02/2000	Mississauga, Ontario, Canada	Environment, Industry	TPC application [Technology Partnerships Canada]	Environment Canada, Industry Canada, Natural Resources Canada, Transport Canada
VERSA SERVICES LIMITED	12/08/1997 to 18/08/1998	Etobicoke, Ontario, Canada	Government Procurement	Outsourcing of food service [alternative service delivery]	National Defence, Public Works and Government Services Canada
ADGA GROUP	11/06/1997 to 08/09/2002	Ottawa, Ontario, Canada	Defence, Government Procurement	DND Land Software Centre L1696 very short range air defence system	National Defence, Public Works and Government Services Canada

Table 1 (continued) Firms represented by Gordon O'Connor, October 1996–February 2004

Client	Period	Location	Subject matter	Name or description of gov't contract	Gov't institution
T&T PROPERTIES	20/10/1997 to 06/12/1998	Saskatoon, Saskatchewan, Canada	Government Procurement	Real estate leases	Justice Canada, Public Works and Government Services Canada
RAYTHEON CANADA LTD	23/05/1997 to 18/08/1998	Waterloo, Ontario, Canada	Other (specify)—ALTERNATE SERVICE DELIVERY	Alternate service delivery	Federal Office of Regional Development—Quebec, Fisheries and Oceans Canada, Atlantic Canada Opportunities Agency, Industry Canada, National Defence, Public Works and Government Services Canada, Transport Canada, Western Economic Diversification Canada
BOVAR INC	18/12/1996 to 12/05/1997	Calgary, Alberta, Canada	Environment	Environmental assessments; environmental clean-up waste disposal	Environment Canada, National Defence, Public Works and Government Services Canada, Canadian Heritage, Transport Canada
ASSOCIATION OF BLUE CROSS PLANS, THE	11/08/1996 to 12/05/1997	Etobicoke, Ontario, Canada	Aboriginal Affairs, Health	Non-insured health benefits project for aboriginals	Health Canada, Indian and Northern Affairs Canada, Public Works and Government Services Canada
UNITED DEFENSE, L.P	10/08/1996 to 23/02/2004	York, Pennsylvania, USA	Defence, Government Procurement	Armoured personnel carriers; armoured gun system; M113 track contract.	Atlantic Canada Opportunities Agency, Industry Canada, National Defence, Public Works and Government Services Canada
GENERAL DYNAMICS CANADA	10/08/1996 to 28/11/2001	Nepean, Ontario, Canada	Defence, Government Procurement	Land Forces Command system/ counter battery target acquisition sys/search&rescue/ maritime helicopters	Industry Canada, National Defence, Public Works and Government Services Canada
BAE SYSTEMS	10/08/1996 to 23/02/2004	Ottawa, Ontario, Canada	Defence, Government Procurement	Mortars/ ammunition/gun barrels/range decontamination contracts	Foreign Affairs and International Trade, Industry Canada, National Defence, Public Works and Government Services Canada, Treasury Board of Canada, Western Economic Diversification Canada
WESTERN STAR TRUCKS INC	10/08/1996 to 09/06/2001	Kelowna, BC, Canada	Defence, Government Procurement	Light utility vehicles wheeled	Industry Canada, National Defence, Public Works and Government Services Canada, Western Economic Diversification Canada

Source: Office of the Registrar of Lobbyists, Lobbyists Registration System. <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/Home>

before being named Minister of National Defence in the newly-elected Conservative government in 2006. As is well known, prior to his election to the House of Commons, Minister O'Connor served in the Canadian Forces for 30 years, rising to the rank of Brigadier-General before his retirement.

Similar to a number of retired military officials in Canada who go on to work as lobbyists, in 1996

O'Connor joined the Ottawa firm of U.S.-based Hill and Knowlton Public and Government Relations, serving as senior associate. In that capacity, O'Connor acted for 28 Canadian, U.S., and European firms operating in a range of industries seeking federal contracts.

While O'Connor has always maintained that he is in no conflict of interest regarding military procurement, the fact remains that he possesses significant power that

Table 2 Global Top 10 Defence Firms (2006)

Rank	Company	Country	2005 Defence Revenue (U.S. Millions)	Former client of Gordon O'Connor
1	Lockheed Martin	U.S.	\$36,465.0	
2	Boeing	U.S.	\$30,791.0	
3	Northrop Grumman	U.S.	\$23,332.0	
4	BAE Systems	U.K.	\$20,935.2	Yes
5	Raytheon	U.S.	\$18,200.0	Yes
6	General Dynamics	U.S.	\$16,570.0	Yes
7	EADS*	Netherlands	\$9,120.3	Yes
8	L-3 Communications	U.S.	\$8,549.2	
9	Thales	France	\$8,523.3	
10	Halliburton**	U.S.	\$7,552.0	Yes

* Airbus Military is a subsidiary of Airbus, a joint venture between BAE Systems and EADS.

** Brown and Root Services is a subsidiary of Halliburton

Source: DefenseNews.com

could affect choices made, and he has a strong history with certain contractors and not others.

Table 1 provides details on firms represented by O'Connor during his employment with Hill & Knowlton.

Between October 1996 and February 2004, O'Connor represented clients before departmental officials from National Defence, Fisheries and Oceans, Health Canada, Solicitor-General Canada, the RCMP, Justice Canada, Transport Canada, Environment Canada, Privy Council Office, Indian and Northern Affairs Canada, and Industry Canada, among others.

Notably, Gordon O'Connor represented some of the largest defence industry players in the world during his tenure with Hill & Knowlton.

Information tabulated by the U.S. defence industry weekly *Defense News* (see Table 2) shows that Gordon O'Connor's clients or their parent companies included five of the 10 largest international defence firms, including BAE systems, Raytheon, General Dynamics, EADS (parent with BAE of Airbus Military), and Halliburton (parent of Brown and Roots Services).

Combined, these companies generated more than \$72 billion in global defence revenues in 2005 alone.

Opposition members have argued repeatedly that Gordon O'Connor's recent lobbying makes him unsuitable for Defence Minister. After his appointment, the Liberals asked 19 questions in the first 10 weeks of Parliament about O'Connor's past lobbying.

For instance, on April 10, 2006, Liberal Defence critic Ujjal Dosanjh questioned Gordon O'Connor's denial of any conflict of interest with him as Defence Minister overseeing multi-billion dollar programs:

"Mr. Speaker, this is a new standard? Just because the Minister says there is no conflict, there ought to be no conflict? As the Polaris Institute noted, the Defence Minister's 'rap sheet on working for the arms industry is as long as your arm.' What is worse, the Conservative platform looks like a tailored wish-list for most of his former clients. Now we see Airbus running a huge advertising campaign since his appointment to that portfolio. Why is the Prime Minister not concerned that defence procurement may turn into a concession stand for his Minister's former clients?"

In response, Prime Minister Harper rose to defend his newly appointed Defence Minister and former lobbyist, Gordon O'Connor:

“Mr. Speaker, as I have said in the House before, the Minister of National Defence, who was a member of the armed forces himself and is very knowledgeable on the defence industry, has complied and will comply with all conflict of interest regulations. However, let me be clear. The spending plans of the government for national defence are there to ensure that our men and women in uniform have the best equipment possible.”

Opposition parties, and indeed the public, have reason to be concerned. Government watchdogs say that, where military contracts are involved, oversight is needed. “DND’s recent history is not good,” said Duff Conacher, coordinator for the group Democracy Watch. “The purchase of military hardware is an area that is ripe for abuse.”⁸

Despite the Conservative government’s efforts to correct past problems through its touted Federal Accountability Act, Conacher has pointed out that loopholes remain. For example, although former MPs are prevented from lobbying for government contracts for firms five years after leaving office, there are no such measures to prevent lobbyists becoming MPs or Cabinet Ministers and presiding over competitions for contracts involving their former clients or firms.

When procuring goods and services for government use, the lead department should always ensure that the process is open and transparent. Contracts should be awarded using a merit-based system to ensure that the best option has been chosen. This is especially true for the Department of National Defence, given the considerable amount of public funds used to purchase military equipment, and the relationship O'Connor had with large defence companies prior to his appointment to Cabinet.

However, a review of the tendering process used by the government raises concern over whether Canadian troops are indeed being provided with the best equipment at the lowest cost, in the quickest time. Are the contracts really being awarded on a merit-based system to ensure that there are no improprieties occurring?

Awarding Advance Contract Award Notices

Much of the controversy is related to the practice of using Advance Contract Award Notices (ACAN) in the tendering process. The Treasury Board defines ACANs as follows:

“An Advance Contract Award Notice (ACAN) allows departments and agencies to post a notice, for no less than fifteen calendar days, indicating to the supplier community that it intends to award a good, service, or construction contract to a pre-identified contractor. If no other supplier submits, during the fifteen calendar day posting period, a statement of capabilities that meet the requirements set out in the ACAN, the competitive requirements of the government’s contracting policy have been met. Following notification to suppliers not successful in demonstrating that their statement of capabilities meets the requirements set out in the ACAN, the contract may then be awarded using the Treasury Board’s electronic bidding authorities.

If other potential suppliers submit statements of capabilities during the fifteen calendar day posting period, and meet the requirements set out in the ACAN, the department or agency must proceed to a full tendering process on either the government’s electronic tendering service or through traditional means, in order to award the contract.”⁹

Ironically, while the process favours a single supplier, the Treasury Board does not consider ACANs to be non-competitive. According to Treasury Board, an ACAN contrasts with non-competitive contracts in that they provide all suppliers an opportunity to signal their interest in bidding; ACANs are posted for 15 days on the Internet, and the process is opened if a supplier’s statement of capabilities is valid.

According to information provided by Public Works, “Limited tendering is a process which allows deviations from the competitive process including the ability to contact a sole or single supplier or a number of suppliers individually. This in fact means that it is possible to have a competitive procurement within a limited tendering process.”¹⁰

As an extra precaution, according to Treasury Board, the decision to reject a challenger “is impartial and independent in that it will not be made by the same

officials who originally decided to proceed through the ACAN process.”¹¹ However, in her testimony to the Standing Committee on National Defence, Auditor-General Sheila Fraser said the following:

“With respect to ACANs, the office made its position clear a long time ago, in 1999-2000. We feel that ACANs contribute very little to competitiveness... Although it definitely ensures greater transparency, one can see, simply by looking at the title, that it constitutes a notice that is given prior to awarding a contract. It means greater transparency, but it is not a competitive process.”¹²

An examination of recent government military purchases using the ACAN process demonstrates the inherent problems, particularly in terms of identifying options which may have proven more beneficial than the item actually favoured. This factor only adds to the controversy surrounding the secretive manner by which the government procures military equipment.

Medium to Heavy Lift Helicopters

In the case of the \$4.7 billion contract for 16 new Medium to Heavy Lift Helicopters, Public Works posted an ACAN on its MERX tendering website on July 5, 2006, announcing that the contract had been awarded to the Boeing-built CH-47 (*Chinook*) helicopter. The notice stated: “Research indicates that the Boeing Chinook is the only aircraft that meets the high level mandatory requirements...,” but allowed an extended period—30 days instead of the usual 15 days—for competitors to argue that their products similarly met the contract requirements.¹³

On August 4, 2006, Public Works announced that at least one supplier had submitted a Statement of Capabilities to demonstrate how it could meet all of the advertised requirements.¹⁴ While Public Works did not name the supplier, there is speculation it was the U.K. firm AgustaWestland arguing on behalf of its EH-101 helicopter. Canada purchased 15 heavy-lift EH-101s for search-and-rescue purposes in the 1990s.

Within one week, government officials dismissed the company’s challenge to bid on the contract. Its bid was reviewed, but “did not demonstrate that the challengers could meet the mandatory requirements published in the ACANs.” At that time, the government also announced that two other challenges on another

contract for strategic airlift aircraft were rejected, and in both cases the companies had been notified and “the procurement process will continue.”¹⁵

Strategic Airlift

In another controversial project, also announced on July 5, 2006 (the same day as the *Chinooks*), Public Works posted an Advance Contract Award Notice on MERX that it had also chosen Boeing for the purchase of strategic airlift, specifically four C-17 *Globemaster III* transport aircraft valued at \$1.8 billion for the fleet of aircraft. “Generally, only one firm has been invited to bid,” the ACAN noted under the heading “Tendering Procedures.”

In the same process as the *Chinooks* contract, on August 4, 2006, Public Works announced that it had received challenges from two companies. In a written statement, Minister Michael Fortier said, “From the outset, I have said that the procurement of military aircraft for Canada’s armed forces would be done in a fair, open, and transparent manner, in line with this government’s commitment under the *Federal Accountability Act*.”¹⁶

A week later, Boeing was confirmed as the only qualified supplier. “I am pleased to see this process is moving in a fair, open, and transparent manner,” said Minister Fortier.¹⁷

But, according to documents obtained by the *Ottawa Citizen*, the military changed a key requirement of the program to exclude the only other possible aircraft supplier, the European manufacturer Airbus and its A400M transport aircraft, currently in development for several European nations. Only weeks before the ACAN was announced, military planners doubled the payload requirement for their desired fleet from 19.5 tonnes to 39 tonnes of cargo, the *Ottawa Citizen* disclosed.¹⁸ The reasoning behind this significant modification has not been explained by DND.

The change effectively eliminated the Airbus A400M at the last minute, and the contract between Boeing and the Canadian government was signed on February 2, 2007 for \$1.8 billion plus \$1.6 billion for 20 years’ in-service support.

Tactical Airlift

A third major program likewise faces charges of unfair competition, once again ruling out a bid by Airbus in favour of a U.S. company using a Solicitation of Interest and Qualification (SOIQ) procurement process which is used to identify qualified bidders. In November, 2006, Lockheed Martin was selected to provide its C130J aircraft to replace Canada's Hercules, a contract valued at \$3.2 billion for 17 aircraft. The acquisition stipulated that competing aircraft had to complete a test flight by the time the contract was awarded in the summer of 2007. That rule automatically eliminated the Airbus A400M, which is in the final development stages and will not be available to fly until 2008.¹⁹

Having been pushed out of a second competition, angry Airbus officials threatened the government with legal action: "We reserve (the right) to look at all our options and not to rule out any options," said

Richard Thompson, a senior Airbus vice-president, to the *Ottawa Citizen*.²⁰ Airbus contends that the A400M could save taxpayers billions of dollars and still match Lockheed Martin's delivery schedule.

Fixed-wing Search-and-Rescue Aircraft

In what could be the fourth in a series of *de facto* sole-source contracts, the military is set to select the Italian-American maker of the C27J Spartan as its preferred supplier for a \$3 billion contract for search-and-rescue aircraft and support to replace its fleet of Buffalo and Hercules aircraft. The C27J is built in Italy by government-owned Alenia in partnership with the U.S. company, Lockheed Martin.

According to documents obtained by the *Globe and Mail*, only one aircraft manufacturer is being considered as a "viable bidder" for the contract: the Italian maker of the C27J Spartan. The loser is the Spanish-built

Table 3 The Government of Canada's "Canada First" Defence Strategy Procurement Plan, Announced in June 2006.

Item	Proposed Number of Items	Capital Project Cost	Procurement Process	Competitive	In Service Support Length	In Service Support Cost	Competitive	Total Estimated Project Value
Strategic Airlift	4	\$1.8 B	ACAN	Yes	20 yrs	\$1.6 B	*dependant on ACAN outcome	\$3.4 B
Tactical Airlift	17	\$3.2 B	SOIQ	Yes	20 yrs	\$1.7 B	Yes	\$4.9 B
<i>Strategic & Tactical Subtotal</i>		\$5 B				\$3.3 B		\$8.3 B
Medium-to Heavy-Lift Helicopters	16	\$2 B	ACAN	Yes	20 yrs	\$2.7 B	Yes	\$4.7 B
Medium-Sized Trucks	See below breakdown	\$1.1 B	Request for Proposals (RFP)	Yes	20 yrs	\$100 M	Yes	\$1.2 B
Support Ship	3	\$2.1 B	Request for Proposals (RFP)	Yes	20 yrs	\$800 M	Yes	\$2.9 B
Total		\$10.2 B				\$6.9 B		\$17.1 B

Medium-Sized Trucks breakdown: 1,500 vehicles designed specifically for military use with up to 300 load-handling system companion trailers; 800 commercial vehicles adapted for military use; 1,000 specially equipped vehicle kits, such as mobile kitchens, offices, and medical or dental stations; and 300 armour protection systems.

Source: Department of National Defence. "Backgrounder 'Canada First' Defence Strategy Procurement." 29 June 2006, BG-06.014—http://www.dnd.ca/site/newsroom/view_news_e.asp?id=1973

C295, which is built by CASA, a partner in the EADS consortium of companies that also owns Airbus.

EADS-CASA officials have complained that the military is tilting the competition towards the Spartan, even though the C295 aircraft is used by eight countries and has long been used for search-and-rescue operations. By comparison, the DND-favoured C27J Spartan is relatively new and unproven. DND argues that EADS-CASA's C295 is too slow to meet its hypothetical missions, which include travelling from a base in southern Canada to the Arctic.²¹

Canadian airplane maker Bombardier argued that its Dash-8 could satisfy the military's needs, but it has not been considered a serious contender.

An Overview of the Procurement Process

Military contracts are a complicated business. Multiple interests must be balanced against one another, and many opportunities exist to sway a contract toward a particular contractor.

Four departments are involved in the defence procurement process: National Defence, Public Works and Government Services, Industry Canada, and the Treasury Board.

At the earliest stage, military planners within the Department of National Defence determine the technical specifications for new military equipment, based on the requirements of the armed forces.

It is at this stage that a change of a specific requirement can rule out competing companies and favour a single contractor, as shown above. For instance, determining how much weight an aircraft must be able to transport or how fast it can fly a certain distance can leave a single qualified provider. In the case of strategic airlift, the doubling of the required cargo weight the plane could carry left only the Boeing built C-17s as a possible aircraft.

Once the technical specifications are set, the actual tendering process is handled by the Department of Public Works and Government Services. In an open competition, Public Works will issue a request for proposals to determine a supplier.

But, as discussed, the department has recently been making use of another method, Advance Contract Award Notices, which announces that a single company has been pre-selected, but allows others to contest the decision. ACANs were used for the strategic-lift and medium-to-heavy-lift helicopters projects.

A similar method is to issue a Solicitation of Interest and Qualification (SOIQ), whereby companies are invited to submit proposals to meet equipment requirements. This method was used for the tactical airlift program, and only Lockheed Martin was found to be qualified to bid. The government is now in negotiations with the U.S. company over the terms of the contract.

Once the contracting process has been determined, Industry Canada is asked to identify Canadian companies that may be able to act as subcontractors in the production of the required equipment. Industrial regional benefits, discussed below, are also under the purview of Industry Canada.

Cabinet is required to approve the contracts valued at more than \$100 million (Major Crown Project), or where the project has significant regional, economic, or policy implications.

Lastly, the Treasury Board finalizes the agreement and ensures its policies have been respected. If there is a dispute with another company, Public Works defends the selection process purchase before the Canadian International Trade Tribunal, an independent quasi-judicial body that reports to Parliament.²²

Increased use of Non-Competitive and Limited Tendering Processes

The focus on the military procurement process is raising questions about the method of awarding multi-billion-dollar contracts. The intricate, complicated, and arguably picayune process is now the subject of daily media coverage, questions in Parliament, and all-party committee investigations.

For anyone unfamiliar with government procurement, the use of non-competitive or limited tendering process for so many projects may seem out of the ordinary, but a study of military contracts over the last three years reveals that in fact federal contracts are frequently

Table 4 Business Access Canada data on Public Works Procurement Method for the Department of National Defence, FY2004-05–FY2006-07

Fiscal Year	Contract Value			Number of Contracts		
	Value of Contracts (Billions)	"Non-Competitive" (Billions)	"Limited Tenders" (Billions)	Number of Contracts	"Non-Competitive"	"Limited Tenders"
FY2004-2005	\$9.368	\$1.439 (15.36%)	\$1.719 (18.35%)	19799	6855 (34.62%)	7221 (36.47%)
FY2005-2006	\$6.116	\$1.292 (21.12%)	\$1.481 (24.21%)	19296	7336 (38.02%)	7639 (39.59%)
FY2006-2007	\$3.535	\$1.196 (33.84%)	\$1.394 (39.42%)	19568	8034 (41.06%)	8398 (42.92%)

Source: Business Access Canada (formerly Contracts Canada). Contracts History (CSI) database.

Note to Reader 1: All "Non-Competitive" contracts are included within the "Limited Tenders" classification, however not all "Limited Tenders" are considered "Non-Competitive" contracts according to federal government rules, hence the separate use of these classifications by Public Works and the inclusion of both classifications here.

Note to Reader 2: The Business Access Canada database is not an exhaustive record of all federal contracts and in some cases relies on departments to provide data. For instance, departments can exclude contracts on grounds of national security and for other reasons, and therefore figures here should not be considered absolute. For more information, consult the Business Access Canada disclaimer available at <http://csi.contractsCanada.gc.ca>.

deemed non-competitive or a limited tendering more than a third of the time.

Business Access Canada (formerly Contracts Canada), a division of the Department of Public Works and Government Services (PWGSC), maintains a publicly-available Contracts History online database of federal contracts.²³

The database contains information on contracts awarded by PWGSC on behalf of all federal government departments and agencies for the last three years. Users can learn the details of each contract, including the contracting government department's name, the value, the manner in which the contract was awarded, and the company it was awarded to. Most, but not all, federal contracts are included in the database.

A detailed analysis of the Contract History database reveals that 8,034 of the 19,568 federal contracts awarded by PWGSC for DND in FY2006-07, were classified as "non-competitive" by the government. This comprises 41.06 per cent of reported contracts.

Treasury Board rules allow limited tendering for 13 reasons, and according to the database the most common reason cited is "Exclusive Rights" (44%) or "Low Dollar value" (40%).²⁴

The prevalence of non-competitive contracts has risen in the last two years. Alarming, the percentage in value of all DND contracts classified by Business Access Canada as "non-competitive" has more than doubled in the two years between FY 2004-05 and FY2006-07, from 15.36 per cent to 33.84 per cent.

As Table 4 indicates, the Contracts History database makes a distinction between what it defines as "non-competitive" and "limited tenders." All "non-competitive" contracts in the database are also classified as "limited tenders," however not all contracts deemed "limited tenders" are likewise considered "non-competitive" according to federal government rules.

Consistent with the growing lack of transparency in military contracts, the \$3.4 billion Boeing contract for C-17 *Globemaster IIIs* announced on February 2, 2007 has not been included in the Contracts History database. However, if this ACAN contract were to be factored, the data would show that "Limited Tenders" accounted for a whopping 69.12% of the value of all reported DND contracts in FY2006-07, a tripling of the value of limited tenders over two years.

The Cost to Taxpayers

As discussed, the Department of National Defence spends significantly more than other departments. According to Public Works, DND accounts for 56% of all procurements. The number of new military equipment programs announced in 2006 alone will cost more than \$17 billion.

Experts in government procurement argue that Canadian taxpayers suffer in two ways when procurement is non-competitive.

1. Increased Cost of Equipment

First, the cost for equipment purchased is higher when there is no competition between potential companies vying for the contract. For instance, a U.S. Air Force study on the purchase of jet engines indicated that competition can reduce the cost of a procurement by 20%.²⁵

The government has awarded or indicated preferred suppliers for four major programs with a total anticipated cost of more than \$16 billion (strategic and tactical airlift, \$8.3 billion; medium-to-heavy-lift helicopters, \$4.7 billion; and fixed-wing search-and-rescue, \$3.4 billion). Considering the 20% reduction in costs for competitive procurement, the savings for the military and Canadian taxpayers could be as high as \$3.2 billion if more than one company were allowed to bid on each contract.

A recently disclosed internal DND audit gives credence to this assumption. Auditors are alarmed that a sole-source, non-competitive contract to maintain the military's fleet of light armoured vehicles has resulted in the government overspending at least \$8 million a year for the work, according to the *Globe and Mail*.

Additionally, auditors found increasing management fees and unchecked sub-contracting costs, raising the possibility that the government is being double-billed for labour. The auditors said that there is room to save "at least \$80 million over the next 10 years of the contract." Regarding the purchase of the light armoured vehicles, the maintenance contract was awarded to the maker, U.S.-owned General Dynamics Land Systems based in London, Ontario.²⁶

Wilfred Laurier University Professor Alistar Edgar, who studies defence procurement, warns that "the democratic process and competitive process in Canada loses out in the end. If the equipment comes in late or is poor or overpriced, then the Defence Department loses, and Canadian taxpayer money is lost as well."²⁷

2. Fewer Industrial Regional Benefits

The second cost to the taxpayer from non-competitive contracting is in industrial regional benefits (IRBs) to Canadian companies for equipment purchased from foreign suppliers. Offsets, or the practice of requiring foreign suppliers to purchase goods or sub-contracted services from domestic firms, are part of the negotiating process in military contracts. When announcing military contracts, the government highlights the benefits to Canadian industrial sectors through the IRB policy.

Often the policy is not implemented to the satisfaction of all. Bloc Québécois Defence Critic Claude Bachand is concerned that Canada is losing out on opportunities for Canadian companies because the government has given up too much negotiating leverage in the non-competitive process. "The awarding of procurement contracts should be an economic bonanza for Canadian companies," he wrote recently. "Unfortunately, the way these contracts are being awarded seriously limits the industrial benefits that Canadian companies had hoped to reap."²⁸

Bachand's fears may have been realized in the \$3.4 billion contract for four Boeing C-17 *Globemaster III*s and 20 years' in-service support. In line with its IRB policy, the government has proclaimed that for every dollar spent a dollar had to be re-invested in Canada. The ACAN notice issued in 2006 stated: "There will be a requirement to provide Canadian Industrial Benefits equivalent to 100% of the contract value."²⁹

However, the value of the contract for 20 years of in-service support of the four aircraft, valued at \$1.6 billion, was awarded to the U.S. Air Force by Boeing and is therefore not counted when determining the amount of IRB, according to the CanWest News Service. "The policy of \$1 for \$1 applies for foreign manufacturers. We have always been clear on that," said a spokesperson for Industry Minister Maxime Bernier. "The U.S. Air Force is not a foreign

manufacturer.”³⁰ The result is that \$1.6 billion worth of IRBs was lost to the Canadian economy.

Parliamentary Oversight

The succession of rejected bids and perception of unfair practices in Public Works and National Defence is increasingly disquieting. Even more alarming are the concerns expressed by a former defence procurement official, who claims that the system has gone seriously astray.

Alan Williams is the retired assistant deputy minister for procurement in the Department of National Defence, and he recently told the *Globe and Mail* that “these *de facto* sole-source contracts show there is something wrong in the overall procurement system.”³¹

Given the number of departments involved, serious questions are raised about accountability and ensuring that military requirements are met in a transparent fashion, which best benefits Canadian taxpayers.

Appearing before the Standing Committee on National Defence at the recommendation of NDP Defence Critic Dawn Black, the former chief weapons tester for the Pentagon, Philip Coyle, endorsed greater parliamentary oversight over military procurement. From 1994 to 2001, Coyle was assistant secretary of defense and director, Operational Test and Evaluation, in the U.S. Department of Defense, and is the longest serving director in the 20-year history of the office. In this capacity, he was the principal advisor to the Secretary of Defense on test and evaluation at the U.S. Department of Defense, overseeing more than 200 projects.

Drawing on his experience in the United States, Coyle told Members of Parliament that, “generally, when the U.S. Congress maintains closer oversight and review, U.S. soldiers get better, more effective equipment, sooner and cheaper.”³²

The Argument for Expediency

Government and military officials argue that the reliance on limited-tenders and ACANs centres on expediency. First, they argue that soldiers in the field often require equipment quickly in order to safeguard

their security. Second, proponents say that the overall state of the Canadian military is at a point where, without a rapid infusion of cash, there is a risk that we face a large-scale collapse of our military. Each argument warrants greater scrutiny.

Federal government procurement rules allow for the use of non-competitive purchasing in cases of “Extreme Urgency.” But the study of the Business Access Canada Contract’s History Database shows that this is a relatively infrequent reason cited for the use of non-competitive contracts.

For instance, in FY2006-07, of the 8398 “limited tenders” awarded by the federal government, only 240 of these contracts, or 3%, were for reasons of “Extreme Urgency.” (However, contracts of this nature, such as for Afghanistan, may also be deemed secret for national security and therefore be excluded from the Contracts History database.)

Furthermore, an examination of Public Works’ public tendering website, MERX, indicates that delivery dates for major procurements likely will not come before February 2009, when Canada’s military commitment to Afghanistan ends. For example, the *Chinook* Medium-to-Heavy-Lift Helicopter has a delivery date of “no later than 36 months after contract award” for the first aircraft, and “no later than 60 months after contract award” for the final aircraft delivery.³³ The contract has yet to be signed, with negotiations still ongoing between the government and Boeing. A report by the *Ottawa Citizen* indicates that the first helicopter is not expected to be delivered until 2010.³⁴ Similarly, the C130-J tactical airlift have the same delivery date requirements of 36 and 60 months, with the contract expected to be signed by summer 2007.³⁵

Comparatively, the four C-17 *Globemaster III*s will be delivered much sooner, yet even these will not provide much assistance to the Afghanistan mission. The MERX specifies that “delivery is expected to commence no later than 18 months after contract award.”³⁶ The finalized contract with Boeing was announced by Ministers Fortier, O’Connor, and Bernier on February 2, 2007.³⁷ Thus, delivery can be expected in summer 2008, approximately six months before Canada’s mission in Afghanistan is scheduled to end.

Philip Coyle is not the only person to urge increased parliamentary oversight in order to speed up the

procurement process. Allan Williams, former Deputy Minister for Procurement at DND, identifies the preparation of the statement of requirements as a main cause of delay. This delay is actually increased by the use of sole-sourcing contracts, as “the internal debates by bureaucrats and politicians over which firm should receive the sole-source contract and why” take up considerably more time than people generally realize. There is also a heightened risk of legal challenges from suppliers who see their challenges to the ACAN process dismissed.³⁸

Based on this information, the argument that the ACAN or similar sole-source process must be used in order to quickly rebuild the Canadian military is seen to be spurious. Internal efficiency and an open process will ensure that major procurement projects are completed in a timely fashion. Using a system that is not seen as open and transparent by suppliers and citizens, and cloaking the reasoning in the rhetoric of “supporting our troops” may make it difficult to challenge, but the fact remains that the government is not obtaining the best equipment, at the lowest prices and in the quickest fashion for the military, contrary to its stated objectives.

Conclusion

The Conservative government has staked its reputation on the *Federal Accountability Act*, and as such champions principles of fairness, openness, and transparency. Why, then, is this not the standard approach for military procurement? A review of recent purchases shows a trend toward the increased use of ACANs, which can cost Canadians more—in terms of actual price, regional benefits, and quality of equipment.

If the government is going to insist on spending such large amounts of money, the entire process must be as fair, open, and transparent as possible. This includes removing any appearance of partiality. The government should take the following steps to restore Canadians’ confidence in the process of providing the Canadian Forces with new military equipment.

- **Current Contracts:** No new contract for a Major Crown Project (valued at over \$100 million) for the Department of National Defence should be signed until Parliament is presented with both the audit of defence procurement currently being

undertaken by the Auditor General, and the final report from the Commons Standing Committee on National Defence on its study of “Procurement and Associated Processes.” Both of these reports are expected to be completed by the end of 2007.

- **Ministerial Impartiality:** Cabinet ministers of federal departments involved in defence procurement, especially the Minister of National Defence, should have a clear, long-term separation from firms involved in the defence industry. As a requirement of holding these public offices, the ministers should have at least a five-year separation from any firms supplying the government if they were employed by these firms or lobbied on their behalf

As well, public servants who review contract bids in federal departments involved in defence procurement should have a similarly clear, long-term separation from firms involved in the defence industry.

- **Ministerial Responsibility:** Responsibility for defence procurement should be made the responsibility of the Minister of National Defence, rather than shared across several ministries as it is now (National Defence, Public Works, and Industry). With a single minister bearing full responsibility for military contracts, Parliament and the public would be afforded greater accountability and the military would be relieved of competing and sometimes contradictory departmental interests.

- **Parliamentary Oversight:** New institutional arrangements should be established that will allow government procurement to proceed at a reasonable pace while ensuring appropriate parliamentary oversight. For example, the government could establish a Standing Committee on Defence Procurement. This committee could be responsible for reviewing the procurement and the progress of Major Crown Projects (valued at over \$100 million), be provided with research staff, and have the authority to call upon government ministers, department officials and independent witnesses.

Steven Staples is a Research Associate with the Canadian Centre for Policy Alternatives and Director of the Rideau Institute on International Affairs based in Ottawa.

Notes

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- 2** Leblanc, Daniel. "Challenges made to military purchases," *The Globe and Mail*. 5 August 2006.
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- 4** Pugliese, David. "DND report questions \$4.9 billion plane plan," *The Ottawa Citizen*. 14 December 2006. A1.
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- 6** Leblanc, Daniel. "DND pushes quick plane deal," *Globe and Mail*. 3 January 2007.
- 7** The Standing Committee on National Defence held ten hearings between February 6, 2007 and April 17, 2007 on the subject of the procurement process including the tendering process and the establishment of capability requirements. As of May 7, 2007, the committee has not yet released a report for the study.
- 8** Pugliese, David. "Buying Below the Radar" *Ottawa Citizen*. 20 January 2007.
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- 10** Contracts Canada. Contracts History (CSI). <http://csi.contractsCanada.gc.ca/csi/prod/en/applctrl.cfm?cmd=start>
- 11** Treasury Board of Canada. "Guide for Managers—Best practices for Using Advance Contract Award Notices (ACANS) (Revised January 2004). http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/contracting/acan_guide1_e.asp
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- 14** CNNMatthews. "Public Works Issues an Update on the Procurement Process for the Procurement Processes for the Purchase of Military Aircraft." 4 August 2006.
- 15** CNNMatthews. "Public Works Announces Results of Challenges to ACANS for Military Aircraft." 11 August 2006.
- 16** CNNMatthews. "Public Works Issues an Update on the Procurement Processes for the Purchase of Military Aircraft." 4 August 2006.
- 17** CNNMatthews. "Public Works Announces Results of Challenges to ACANS for Military Aircraft." 11 August 2006.
- 18** Blanchfeild, Mike. "Contract change froze out Airbus, documents show." *Ottawa Citizen*, 26 January 2007. A3.
- 19** Pugliese, David. "Canadian defense buy faces probe" *DefenseNews.com*. 15 January, 2007.
- 20** Blanchfeild, Mike. "Angry Airbus demands chance at deal." *Ottawa Citizen*. 13 December 2006. A6.
- 21** Leblanc, Daniel. "DND to push quick plane deal," *Globe and Mail*. 3 January 2007.
- 22** "The Canadian International Trade Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance." http://www.citt.gc.ca/index_e.asp
- 23** Contracts Canada. Contracts History (CSI). <http://csi.contractsCanada.gc.ca/csi/prod/en/applctrl.cfm?cmd=start>
- 24** Using Contract History database, it is impossible to determine whether awarded contracts were originally posted using Advance Contract Award Notices (ACANS). Public Works allows thirteen reasons to be cited for limited tenders, though when contacted department officials would only say that limited tenders were not necessarily ACANS.
- 25** Pugliese, David. "Buying Below the Radar," *Ottawa Citizen*. 20 January 2007.
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- 27** Pugliese, David. "Buying Below the Radar," *Ottawa Citizen*. 20 January 2007.

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