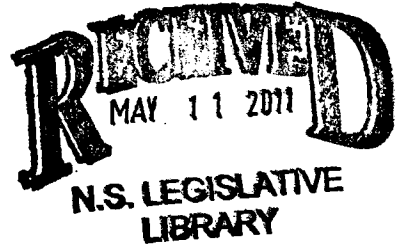


LAW AMENDMENTS COMMITTEE

Red Room, Province House

Tuesday, May 10, 2011 - 2:30 pm



Bill #23 - Public Procurement Act

- 2:30 pm
- 2 ~~X~~ MaryEllen Donovan, Legal Counsel
Halifax Regional Municipality
 - 1 ~~Z~~ John Hope, Associate Legal Counsel
Dalhousie University

Richard Butts
Chief Administrative
Officer

Bill # 55 - Medical Act

- 3:00
- 3. Dr. Lisa Richard, Registrar
Nova Scotia College of Chiropractors
 - 4. Dr. Cameron Little, Registrar
Marjorie Hickey, Legal Counsel
College of Physicians and Surgeons

← 4A. Dan Campbell
Legal Counsel
Canadian Medical
Protective
Association

Bill #36 - Energy Saving Roadway Lighting (2011) Act

- 3:30
- 5. Derek Percival, Director of ^{Atlantic} Operations
Eco-Shift Power Corporation

+ 2 others

Bill #40 - Liquor Control Act (amended)

- 3:45
- 6. Superintendent Bill Moore
Halifax Regional Municipality Police Service
 - 7. Luke Erjavec, Vice President
Canadian Restaurant and Food Services Association

+ May Ellen Donovan
Legal Counsel

Bill #41 - Dangerous and Unsightly Premises Amendment (2011) Act

- 4:15
- 8. Linda Mosher, Councillor
Halifax Regional Municipality
~~Chief Frank Beazley~~ Superintendent Don Spicer
Halifax Regional Municipality Police Service

Const. Gerry Murray
May Ellen Donovan, Legal Counsel

Con't

**Bill #51 - Community Control of Non-controlled-access Highway Advertising
Amendment (2011) Act**

4:30

9. MaryEllen Donovan, Legal Counsel
Halifax Regional Municipality

NO REPRESENTATION

Bill #52 - Government Administration Amendment (2011) Act

4:45

10. Sally Campbell

NO SHOW

Bill #53 - Labour Standards Code (amended)

5:00

11. Claudette Legault, Director of Programs and Services
ISIS - Immigrant Settlement & Integration Services
12. Luke Erjavec, Vice President
Canadian Restaurant and Food Services Association

Bill #57 - Private Ways Act (amended)

5:30

13. John Keith, Partner
Cox & Palmer
Speaking on behalf of Dr. Charles and Marie Cron
14. Susan Sheehan

Bill #17 - Fair Drug Pricing Act

(deferred from previous meeting)

Bill #35 - Body Armour Control Act

(no representation)

Bill #54 - Cemeteries Protection Act (amended)

(no representation)

Bill #56 - Real Estate Trading Act (amended)

(no representation)

DEFERRED

Bill #23
Public Procurement Act

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF ECONOMIC AND RURAL DEVELOPMENT AND TOURISM

PAGE 6 - Subclause 12(1)

- (a) paragraph (j), line 1 - add a coma immediately after "standards";
- (b) paragraph (k), line 2 - delete "Office" and substitute "Officer".

PAGE 8 - Subclause 18(1), line 1 - delete "vendor".

An Act Respecting Public Procurement in Nova Scotia

Dalhousie Speaking Points

1. Dalhousie's Procurement Activities

- 1.1. Dalhousie has a large procurement office with a staff of 15.
- 1.2. In the calendar year 2010 Dalhousie issued 274 tenders and requests for proposals worth a total of approximately \$42 million.

2. General Overview

- 2.1. On the face of it, the *Act* may not require any further action on the part of Dalhousie or it may greatly affect the way that Dalhousie conducts its procurement practices. The full effect of this *Act* will only be known once the regulations have been brought into effect, and Dalhousie has concerns with this approach.

3. Procurement Advisory Group

- 3.1. This Group will play a major role in developing the regulations and standards in accordance with the *Act*.
- 3.2. Dalhousie is a leader in many of the areas highlighted in Section 10, including:
 - 3.2.1. an advanced procurement system. Dalhousie has internal purchasing policies as well as standardized processes and forms for tenders, Requests for Proposal and contractual documents;
 - 3.2.2. internal processes for assessing risk relating to procurement policies and practices;
 - 3.2.3. experience in the identification of strategic procurement opportunities and identification of efficiencies and cost savings in procurement processes; and
 - 3.2.4. a strong team of trained procurement personnel.
- 3.3. Dalhousie is concerned that the regulations and standards which are developed by the Group will adversely impact our procurement operations and may in fact affect our ability to complete some projects on a timely basis.
- 3.4. As such Dalhousie should have a representative on the Procurement Advisory Group.

4. Regulatory Power

- 4.1. Many aspects of the *Act* will be expanded on through regulation including:
 - 4.1.1. Supplier standards, rights and responsibilities;
 - 4.1.2. Alternative procurement exemptions and practices;
 - 4.1.3. Annual reporting requirements; and
 - 4.1.4. The form, manner and procedure to bring a supplier complaint.
- 4.2. Universities have a number of unique factors which must be taken into consideration when determining the appropriate procurement process. These include, but are not limited to, the cycle of the academic year, the varied use of the campus (residence, administration, research and teaching), the requirements of other funding partners and the specific needs of research projects.
- 4.3. As such Dalhousie requests that the *Act* be amended to state “The Minister shall deliver draft regulations or amendments to regulations to public sector entities for consultation at least 180 days prior to submission for approval to the Governor in Council.”

5. Supplier Complaint Process

- 5.1. The complaint process set out in Section 18 is very broad and presents a number of practical issues for public sector entities:
 - 5.1.1. There is no limit on the type of complaint which can move forward, so proponents can file complaints about routine non-negotiable matters such as missing the filing deadline or a failure to comply with mandatory conditions in the RFP;
 - 5.1.2. The finding in the investigation report could be used in litigation; and
 - 5.1.3. The process generally interferes with the commercial relationship between the public sector entity and their contractors.
- 5.2. As such Dalhousie requests that this section of the legislation be amended to state “Each Public Sector Entity shall establish a dispute resolution process to address concerns which are raised by proponents in relation to a procurement process in which they participated.”

Public Procurement Act Amendments - Bill 23

1. HRM has had a general concern with the content of the standard Construction Association contract, commonly referred to as "CCDC", and therefore has been designing its procurement process to include an HRM standard construction contract rather than the construction industry friendly CCDC documents. In our view, best taxpayer value is not achieved using CCDC contracts.
2. The amending provisions set up new procurement rules requiring a significant level of sophistication to ensure compliance. This brings with it the associated risk of non-compliance and resulting litigation. Ensuring letter perfect compliance with this new process would be challenging enough for the larger municipalities but would be extremely challenging for smaller municipalities and therefore creates huge risk for those municipalities.
3. The Bill appears to add a new level of legal rights for the bidders which will add materially to that risk.
4. There are a number of areas in the proposed provisions where the requirements are uncertain, such as provision of "reasonable notice" to respond to public tender notices. Typically, tenders are put out for varying periods of time depending on the availability of the product and various factors. This type of provision simply opens these notice periods, which have not been a source of complaint by the industry, to legal challenge for inadequacy.
5. Because of the complexity and significant changes to the public procurement process in this province as represented by the proposed amendments, the municipality would like to have the opportunity to consult with Economic Development to ensure that the new rules are tailored so as to serve the interests of all Nova Scotians. Given the short time frame within which we have had to consider the implications of Bill 23, we are asking that you put this Bill over until the Fall for further discussion at Law Amendments.

CARRIED

Bill #23
Public Procurement Act

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