



CANADIAN GLOBAL AFFAIRS INSTITUTE  
INSTITUT CANADIEN DES AFFAIRES MONDIALES

# **Living with Loss and Encumbered Incumbents: How do Losing Firms Fit into the Canadian Procurement Ecosystem?**

by Timothy Choi  
July 2021

# CONFERENCE REPORT

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## **LIVING WITH LOSS AND EMCUMBERED INCUMBENTS: HOW DO LOSING FIRMS FIT INTO THE CANADIAN PROCUREMENT ECOSYSTEM?**

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- The procurement system is composed of buckets: those who win (communications method is as contractor, they're executing); those who compete and lose (who go through to the final stages: they have standing with government to deal directly with government and against CITT if it's under a trade agreement, or judicial review [if not under trade agreement]); those who compete partly and lose halfway (either withdraw or lose; you're no longer potential supplier, so CITT won't hear your complaint unless it's an issue with the process)
- Companies have to consider whether their complaints might fall under lobbying
- Companies react generally well to losing a bid: Canada is not a particularly litigious country
- The statement of requirements period is the most crucial; and that's where big firms like Lockheed Martin and BAE Systems have strong expertise
- The biggest interaction between government/ADM(Mat) and industry is in the earlier stage, before the procurement really starts.
- Procurement is a long process and involves multiple governments. But many companies are quite diversified, and for large companies, Canada is not a big market. Success elsewhere feeds into potential success here.
- More litigious companies tend to be ones who are more desperate; those who have other potential projects will tend to try and avoid complications from litigation.
- For small medium enterprises (SME), it's a bit different, as the Canadian market isn't big enough. They might be part of more than one original equipment manufacturer (OEM) team; the OEM can often apply pressure on SMEs.
- SMEs that are part of several teams are also confidentiality weak points
- In-service support (ISS) bundling is tied to the initial acquisition through intellectual property (IP). Companies spend lots in developing tech and, while the government wants to buy that IP, it's a bit of a stretch.
- Most of a company's revenue comes from ISS rather than acquisition itself.
- ISS Conceptual Framework (ISS CF in 2009) was established not due to the desire to own IP, but because that's the only opportunity where the government can leverage the quality and reliability requirements with the desire to bring down maintenance costs.
- The government wants to move more IP to Canadian companies, but they're not always able to use it.
- For Canada's 40-50 year long equipment, 80% of costs will be from ISS. If foreign actors want to get access to sensitive equipment, the easiest way is to join an ISS solicitation process.
- The process of contract structuring depends on whether the client is an incumbent or not, because it relies on collaboration and execution. Preparing for the Statement of



Requirements is the crucial stage – waiting to lose and then litigate and overturn contract is highly ineffective.

- In theory, short term contracts result in fear of termination, and so contractors should work better, but that has never happened because all the work you have invested leading up to the contract results in an incentive to work hard throughout even long-term, decade-long contracts
- The government chose short (~5 year) ISS contracts because the industry said they cannot predict cost beyond that timeframe. It means that there is a rolling extension of contracts: performance in the second year of five is where you start extending the contract for another year or two.

**QUESTION:** *How do you delineate disruptive from legitimate concerns? Does the system actually have a way of distinguishing legitimate issues from frivolous ones?*

- The debrief session is key. Usually, the issue is that losers are frustrated by the lack of clear rationale as to why they lost. Every bidder believes they have legitimate concerns; no one actually litigate for the sake of disruption.
- No one really tries to sue the government since they might have other projects or future bids. They do not want to leave a bad impression on the government for that simple reason (even though the government should not let litigation affect their future assessments of the bidders). If companies had issues, they would engage early on.
- Industry-country relationships last for decades. Being disruptive early on serves no one.
- Canadian SMEs may actually have more power to influence government than the OEM, which are often based abroad, so OEM need to keep this in mind when choosing their domestic partners.
- Some clients are scared to ask questions in the lead-up to the request for information stage. What you think you have committed to in a contract is different from what everyone else is committing to. Most post-bid angst comes from making assumptions about the requirements and not raising questions about them until after the decision has been made.

**QUESTION:** *DND is trending towards issuing Requests for Proposal with combined acquisition and ISS. Doesn't this trend eliminate the incumbent contractor problem?*

- There is not much of a trend in that. Ships' ISS are separate from acquisition, and Fixed-wing search and rescue (FWSAR) projects can easily be redistributed since it is a non-weapons platform.
- The bidding process itself is expensive, so short ISS terms are not the most beneficial.



**QUESTION:** *Airbus is the only winner for the multi role tanker transport. In this situation, how will the government proceed? Will they keep going or go back to redo the requirements to ensure a qualifying competitor?*

- It was ever only going to be just two bidders. Two futures: Canada proceeds with sole-source Airbus or it will go back to the RCAF and ask for lower performance standards, like with FWSAR.
- There is a reluctance to both going to sole-source and watering down requirements.

## ► About the Author

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**Timothy Choi** is completing his Ph.D. at the University of Calgary's Centre for Military, Security and Strategic Studies, where his dissertation is entitled, "Maritime Strategies of the North: The Seapower of Smaller Maritime Forces in an Era of Broadened Security." It asks how the Danish, Norwegian, and Canadian maritime forces developed in response to the adoption and legitimization of the 200 nautical mile exclusive economic zone, and whether smaller forces have generalizable differences in such responses compared to larger ones. This has seen him sailing with Danish and Norwegian patrol vessels to gain deeper insights into the tactical level of peacetime naval activities. He is a former Smith Richardson Predoctoral Fellow at Yale University's International Security Studies, where he worked with Professor Paul Kennedy, and is also a Research Fellow at Dalhousie University's Centre for the Study of Security and Development. He serves on the editorial board of and is the photo editor at the Canadian Naval Review. Outside of academia, his interests and expertise include scale ship modeling, photography, and social media outreach.

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