
**REPORT TO COUNCIL ON AN INQUIRY:
LOBBYING RELATED TO A CONTRACT FOR A
SERVICE EFFICIENCY STUDY**

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BACKGROUND

Accenture, a registered in-house lobbyist firm, had a contract with the City to conduct a Service Efficiency Study (SES) of the operations of the Toronto Transit Commission (TTC). When meeting with City and TTC officials in October 2011 to discuss its performance of the SES contract, Accenture's senior office holder requested an extension of the date by which the work needed to be completed and an additional amount of money to complete the contract. In addition, the firm's senior office holder proposed that the City retain Accenture, at additional cost, to create a "Transit Balance Scorecard Report". These requests were repeated in a memo to City staff dated October 26, 2011. City staff advised the firm's senior office holder that these requests were not in the scope of the contract; and that the proposal for a "Transit Balance Scorecard Report" would be subject to a competitive procurement process. Further, this request should be registered as a lobbying activity. City staff reported the matter to the Office of the Lobbyist Registrar.

Findings

1. Unregistered lobbying and failure to report lobbying activities

Sections 140-10 and 140-21 require an in-house lobbyist to register before lobbying at the City. Sections 140-22 and 140-23 require a lobbyist to report their lobbying activities within three business days after the lobbying occurs.

I have found that the request for additional funds to complete the SES contract and the proposal regarding the "Transit Balance Scorecard Report" constituted lobbying activities that had not been registered or reported in the Lobbyist Registry. When it made these requests, Accenture was registered to communicate about "Technology – Achieve improvement in public value delivered through improvements in service citizens, program delivery and the use of information technology".

Accenture's senior office holder did not report the October 2011 meeting or email under this registration, nor did he open a new registration regarding these lobbying activities, as was required by the Lobbying By-law, §§ 140-10, 140-21, 140-22 and 140-23.

2. Lobbying in relation to a procurement process

Subsection 140-41A of the Lobbying By-law provides:

- A. Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procedures.*

Accenture's communications regarding the "Transit Balance Scorecard Report" concerned the procurement of services and fell within the definition of "lobbying". No exemption under the by-law applied to these communications.

Lobbying related to a Contract

The requests for additional funds and the proposal for a “Transit Balance Scorecard Report” were not part of the administration or performance of the SES contract. They were out of the scope of the SES contract. The proposal for a “Transit Balance Scorecard Report” was essentially an unsolicited proposal.

The SES Procurement Lead and Contract Administrator noted in the memo quoted below that the request for additional monies was not permitted by the contract, and the proposal for a “Transit Balance Scorecard Report” would be subject to a City procurement process. The City’s procurement policies and procedures are designed to preserve the integrity of the City’s procurements. The communications by Accenture’s senior office holder in the October 2011 meeting and subsequent memo of October 26, 2011 did not comply with the applicable procurement policies and documents.

The SES Procurement Lead and Contract Administrator wrote to Accenture’s senior office holder on November 4, 2011 in response to his written request dated October 26, 2011, in part:

All of the SES Assignments, including the TTC Assignment, are for time-limited, fully-scoped work with all requirements and deliverables formalized in the contractual Letter of Agreement for each study. No additional payments are permitted or provided for in the City’s Roster or the Assignments arising from it. The deliverables contracted for between the City and Accenture per the Letter of Agreement and its schedules dated August 29, 2011, are based on a fixed fee for the Assignment The inability of the City to deviate from the fixed fee contracted for the Assignment was conveyed to you . . . at the conclusion of the Interview on July 27, 2011 to pose Questions on Accenture’s initial July 25, 2011 Response to the TTC SES Assignment.

. . . . The City may . . . decide to reduce or to delay fee payments if deliverables contracted for are not met, but in no case will the City increase the fixed fee contracted for.

Respecting the final matter you raise below on recommending that Accenture conduct work for the City on a “Transit Balance Scorecard Report”, this is out of scope for the TTC SES Assignment and has not been contracted for. The fact that this is considered to be new work being proposed to the City by Accenture was noted . . . when explaining to Accenture what constitutes a need to comply with the requirements of the City’s Lobbyist Registry. If that or other work should prove to be of interest to the City or to the TTC itself, one of those entities would issue a call document and Statement of Work specifically for such Assignment.”

3. Appearance of impropriety

The Lobbying By-Law requires lobbyists to avoid the appearance of impropriety:

§ 140-45. Improper influence.

A. Lobbyists shall avoid both the deed and the appearance of impropriety.

Accenture's requests were made during a meeting to discuss the performance of an ongoing contract with the City. This was not the appropriate procedure to use for such requests. Making an unsolicited proposal for new business in such a meeting raised a perception that the Accenture was using the legitimate purpose of the meeting and its contractual relationship with the City to gain new business and to better the terms of a contract that was arrived at through a competitive procurement process. Such activity creates an appearance of impropriety. It may be perceived that the unsolicited proposal for a "Transit Balance Scorecard Report", raised in private at a meeting to discuss the performance of a different contract, was "aimed at influencing the procurement process before it occurs", a practice that was considered to be inappropriate by Madam Justice Bellamy in her Report on the Toronto Computer Leasing Inquiry (Volume 2, Good Government, page 86, Recommendation 108).

Action Taken

In order to provide transparency, I advised Accenture to register and report these proposals. I exercised my discretion to extend the time limits in the by-law to permit Accenture to do so. Accenture has complied with this advice. I also advised Accenture of the impropriety of its proposals in the context of the meeting where they occurred. The firm must comply with the City's and TTC's procurement policies and procedures regarding these and any other proposals it wishes to make.

I have reported on this inquiry to Council, as it involves a novel and important issue concerning the administration of contracts, the Lobbying By-Law and the integrity of the City's procurement processes.

Respectfully submitted,

Linda L. Gehrke
Lobbyist Registrar