

2012-2013

Annual Report

OFFICE OF THE PROCUREMENT OMBUDSMAN









Office of the Procurement Ombudsman

Constitution Square 340 Albert Street 11th Floor, Suite 1150 Ottawa, Ontario K1R 7Y6

Toll Free: 1-866-734-5169 Fax: 1-613-947-9800

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The Minister of Public Works and Government Services

Dear Minister:

Pursuant to section 22.3(1) of the Department of Public Works and Government Services Act, it is an honour and a pleasure to submit the Procurement Ombudsman Annual Report for the 2012–2013 fiscal year.

Yours sincerely,

Frank Brunetta

Procurement Ombudsman

Ottawa, July 2013

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MESSAGE FROM THE PROCUREMENT OMBUDSMAN

MESSAGE FROM THE PROCUREMENT OMBUDSMAN



It is a pleasure to submit the Office of the Procurement Ombudsman (OPO) annual report. This report represents a summary of the activities undertaken by my office during the 2012-2013 fiscal year.

As with any new government entity

established to provide services to a segment of the Canadian population, my challenge continues to be to inform the business community that OPO exists. With this challenge in mind, my office undertook extensive outreach activities this past year. We met with Canadian businesses from across the country through chambers of commerce, boards of trade and supplier associations. It has been striking to attend these meetings and to learn that the majority of business representatives in attendance do not know about OPO and our services. The irony is that once my mandate is explained to them, quite a number have procurement issues to share. In most cases, explaining how things work in federal procurement appears to address the issue. In other cases, issues are raised which suggest something is amiss. Of the many conversations I have had with suppliers over the last year, three such issues have repeatedly been raised.

Like all businesses, the suppliers with whom I have spoken have had their mix of successes and disappointments in obtaining contracts to supply the federal government with goods and services. When a supplier has failed to win a contract, there is an understanding that it is the nature of business

that there is sometimes a more experienced, qualified or lower priced competitor. As one business owner expressed to me "you win some, you lose some, that's the way things go ... but I don't want to be marginalized." This view of being marginalized was echoed by a number of suppliers, who described situations where their bids were rejected by departments over what they viewed as insignificant administrative shortcomings. A typical example was from a potential supplier responding to a contract opportunity which required the curriculum vitae (CVs) and diplomas of staff being proposed for the work. As part of the mandatory criteria, the department requested that bids include one original and four copies of these documents. The supplier provided the original CVs and diplomas for the staff to be assigned to the work but, through an administrative oversight, did not include the four copies. The department deemed the supplier's bid non-compliant and rejected it. Most business people I have spoken with appear to appreciate the complexity of bid evaluation; on one hand, a rule is a rule and they can see it quickly becoming a slippery slope if departments begin assessing degrees of non-compliance or the relative significance or insignificance of bid irregularities. On the other hand, they are quick to voice concern over what is, more often than not, the considerable amount of time and cost associated with preparing detailed, often very technical, multi-page bids, only to be disqualified for reasons that are not germane to the firm's ability, competence or competitiveness to deliver the required good or service. I am hearing growing support for a more reasoned and balanced government-wide approach to replace the current binary "all or nothing" treatment of bid evaluation.

There were also suppliers who approached me or contacted my office to express their dismay over a recent unsuccessful bid. As I mentioned earlier, the vast majority were realistic, understanding that "you win some, you lose some." The result

of the competitive process was not the source of their aggravation. What these suppliers found difficult to accept was that some departments refuse to explain where and why their proposals fell short. Unsuccessful suppliers often receive the minimum information required by policy from some departments, namely a regret letter informing them of the name of the successful firm and the contract value. When suppliers call asking for the opportunity to understand the shortcomings of their bid so as to avoid repeating them in the future, they are informed that the department considers the regret letter their debriefing. Many suppliers (who have invested time and money in preparing their bid) consider being given the opportunity to understand the shortcomings of their bid not only a good business practice, but the right thing to do. A businesswoman expressed the issue to me in a way that caused me to pause. She asked: "would you accept a failing grade in your son's or daughter's report card without wanting to know from the teacher what areas your kid needs to work on?" It is evident that not enough deparments are doing what suppliers consider to be the right thing.

It is common to hear from business representatives about their attempts and associated challenges in bidding and winning their first federal government contract. One particularly thorny challenge to a number of companies is the process to obtain security clearances. There were various concerns expressed with the process; I'll start with one that a supplier termed a "circular labyrinth." This concern was probably best described by a business owner who spoke to me following a presentation I made to an Alberta chamber of commerce. The gentleman expressed a longstanding desire to supply to the federal government but encountered an unexpected and exasperating hurdle. He took the time to explain that he was unable to bid on

federal solicitations because his firm did not have the necessary security clearance, yet he could not find a department willing to sponsor his firm for a security clearance. He went on to explain that this situation was restricting new firms, like his, from providing goods and services to the federal government and, by extension, limiting the pool of firms supplying the federal government to those already doing business with departments. Some suppliers were vocal regarding what they consider to be the incomprehensibleness of being allowed to bid on work for some departments because those departments accepted their firm's security clearance yet not being able to bid on work for other departments because those departments did not recognize the identical security clearance.

In terms of work done to enhance the Office's performance, as I mentioned at the beginning of my message, my informal surveys of business people attending chamber and board meetings continue to indicate a low level of awareness of OPO and the services we provide. An assessment of our outreach strategy was completed to assure myself that it is effective and includes all possible avenues to maximize awareness of the Office's services. While the assessment confirms we are doing a lot of the right things, it has also provided approaches and ideas to increase awareness among the business community. I have started to implement many of those ideas. For example, the assessment showed that the OPO website was the primary means for learning about our services and contacting the Office. Accordingly, the website was re-designed from the perspective of our clients, making it more user-friendly and focused on the issues that would lead the business community to visit the site. I will continue to exploit various other outreach opportunities to ensure that as many businesses as possible can benefit from my office's services.

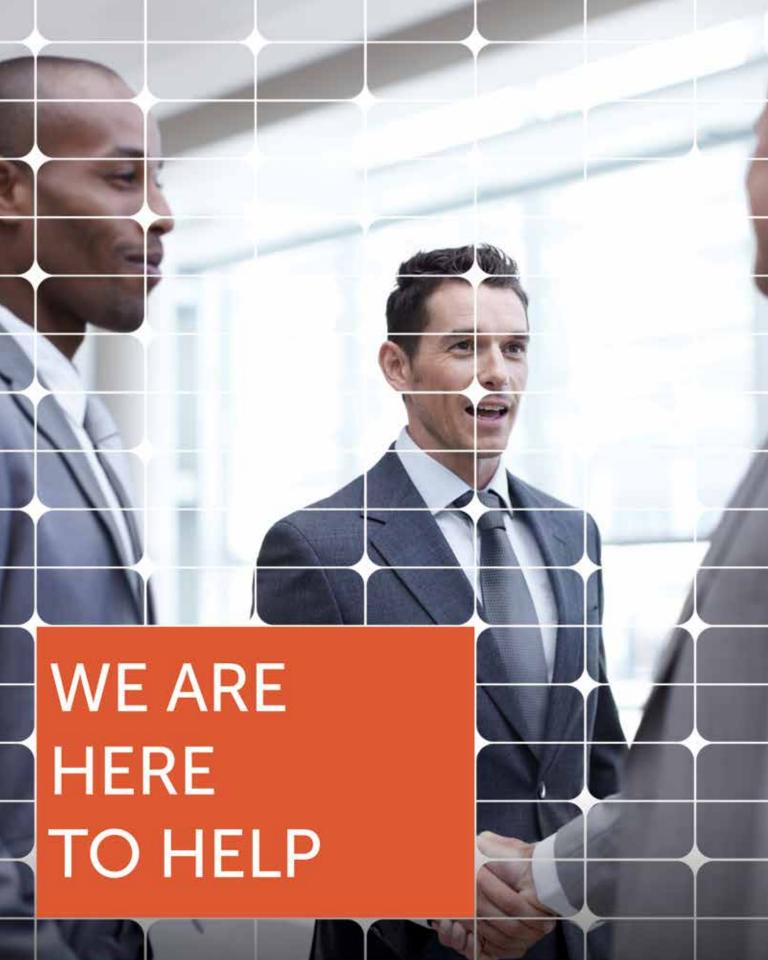
Finally, in last year's report I mentioned that I had commissioned an independent evaluation of the Office's overall effectiveness. I asked that the evaluation draw heavily on the views of the supplier community—both suppliers who had used our services and those who had not—and of officials from major procuring departments. The evaluation concludes that there is an ongoing strong need for the services we provide and suggests we investigate two particular issues raised by the supplier community:

- whether departments should be able to decline participation in my office's voluntary alternative dispute resolution service once it has been requested by a supplier; and,
- whether there are ways of addressing supplier complaints that do not fall within the existing mandate.

We will pursue these issues in ongoing efforts to advance OPO's ability to help any supplier who contacts us experiencing procurement difficulties with the federal government. We will also continue to refine our operations so as to be well positioned to identify opportunities to promote fairness, openness and transparency in federal procurement.

Frank Brunetta

Procurement Ombudsman



WE ARE HERE TO HELP

This report represents a milestone of sorts; it marks the fifth anniversary of the creation of the Office of the Procurement Ombudsman. When the Office opened its doors in 2008, it quickly became apparent that if the Office was to have a positive impact in the world of federal procurement, it could not sit idle and wait for the phone to ring. Members of our staff needed to get out and work with the many players who navigate federal procurement and who have a vested interest in a procurement system that is effective, fair, open and transparent. These include our clients—Canadian businesses that each year supply the federal government with billions of dollars of goods and services—as well as stakeholders, including business associations, chambers of commerce, boards of trade, federal procurement specialists and program managers, and parliamentarians. Since our creation, we have been actively seeking out and listening to members of these communities, sharing information, addressing procurement issues, asking questions and, when necessary, being a voice for their concerns; all the while being very careful to help in such a way as to neither be, nor be perceived to be, a lobbyist for suppliers or an apologist for government departments and agencies. Our primary focus has been, and continues to be, to help in an impartial and unbiased way.

"What I particularly liked in this process was your impartial, relationship-building focus. You kept a calm, measured approach and provided me with solid information about the procurement process, which I really needed to have. You accomplished this in a fair-minded way and that builds trust in the process."

— Supplier

"We are here to help" has grown to be more than a motto. It has become integrated into our business practices and embedded in our daily interactions with clients and stakeholders. It is also the basis for our service-first business model. Simply put, the model means that every phone call, fax and e-mail we receive is answered by a knowledgeable person who is trained to provide prompt, personalized assistance and who remains the point of contact until whatever issue is raised with us has been dealt with. We may not always be the right organization to contact, but we will do our utmost to point anyone who contacts us in the right direction and provide assistance.

Understandably, any business model is only as effective as the team behind it. With decades of experience in government procurement, investigations, alternative dispute resolution, audit, research, and client service, we are a team driven to ensure that every issue and concern brought to our attention is addressed so that we can play our part in promoting fairness, openness and transparency in federal procurement.

Our Mission

To promote fairness, openness and transparency in federal procurement.

Our Mandate

In April 2006, the Government introduced the Federal Accountability Act (2006) and its associated action plan, which included the appointment of a Procurement Ombudsman. The position of Procurement Ombudsman was created through an amendment to the Department of Public Works and Government Services Act (1996). The Procurement Ombudsman Regulations, which were passed in May 2008, provide the authorities for the Procurement Ombudsman to exercise his mandate regarding contracting between Canadian businesses and the federal government as follows:

- Review complaints with respect to the award of a contract for the acquisition of goods below \$25,000 and services below \$100,000;
- Review complaints with respect to the administration of a contract, regardless of dollar value;
- Review the practices of departments for acquiring goods and services to assess their fairness, openness and transparency and make recommendations to improve those practices; and
- Ensure that an alternative dispute resolution process is provided, if requested and agreed to by both parties to a federal contract.

While conducting our reviews of complaints, or the practices of departments, we look for:

- consistency with relevant cabinet policies and procedures
- consistency with departmental policies and procedures
- consistency with the Financial Administration Act and affiliated regulations
- fairness, openness and transparency

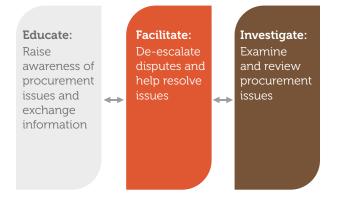
To remedy any shortcomings, we may recommend:

- ways to improve departmental practices
- our services for alternate dispute resolution
- compensation for suppliers
- ways to improve the fairness, openness and transparency of procurement practices

Educate, Facilitate and Investigate

To achieve our mission of promoting fairness, openness and transparency in federal procurement, our strategic objectives focus on three areas:

- Raising awareness of procurement issues and exchanging information through education;
- De-escalating potential disputes and helping resolve issues whenever possible through facilitation; and
- Examining procurement issues through review and **investigation**.



These pillars guide the Office's interactions and are the basis of how we deal with issues brought to our attention by suppliers, federal departments and agencies, and others interested in federal procurement.

"I want to thank you and any others in your [office] that got this situation addressed for us. I'm sure that without your involvement we would still be chasing payment."

— Supplier





PROFILE OF CONTACTS

DIAGRAM 1



As illustrated in Diagram 1, the Office of the Procurement Ombudsman (OPO) processed 369 telephone, e-mail, fax and in-person contacts this past year. This represents an 11% increase in the number of contacts from the previous year. Our objective in dealing with these contacts is to provide factual and timely information in a neutral and impartial manner.

Of the 369 contacts, 136 (37%) were general and non-procurement-related in nature. They consisted of inquiries from members of the general public attempting to reach a government department or experiencing difficulty with a government program and not knowing where to turn (e.g. questions

regarding travel or health insurance, immigration, banking). Regardless of the issue, OPO staff worked diligently in playing the role of pathfinder and in providing support and information.

The remaining 233 contacts (63%) were procurement-related, ranging from general inquiries (e.g. how to do business with the federal government, where to find information on a specific topic) to inquiries from stakeholders pursuing a specific federal procurement (e.g. asking about the details of a solicitation or the rules governing a particular procurement process).

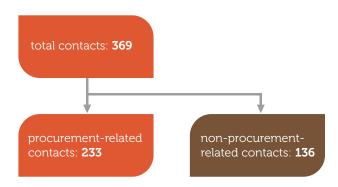
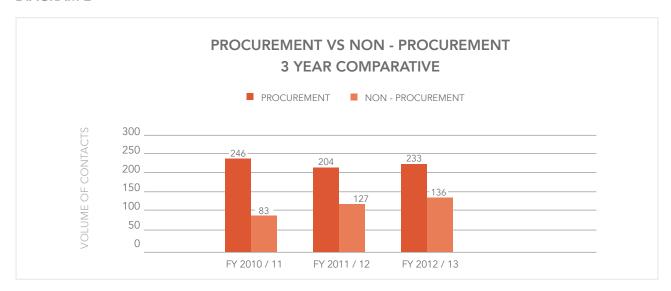


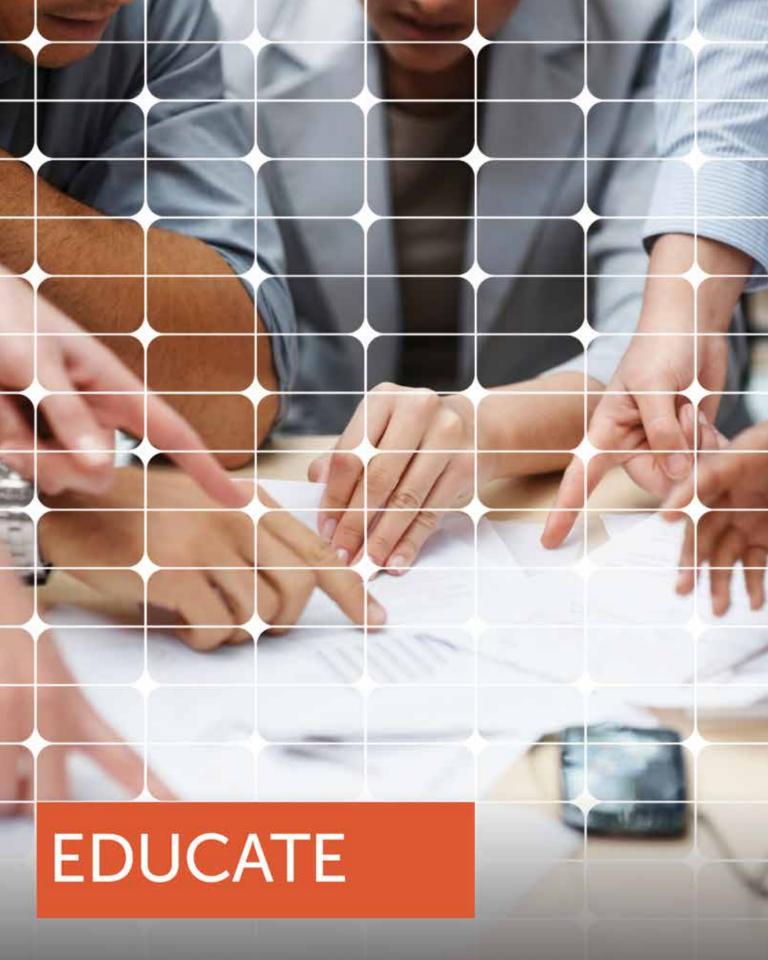
DIAGRAM 2



While Diagram 2 illustrates that the Office has experienced an increase in the volume of procurement-related contacts from 2011-2012, the ratio of procurement-related contacts to non-procurement-related contacts has remained relatively stable. Procurement-related contacts represented 62% of the total number of contacts in 2011-2012 and 63% in 2012- 2013.

The three strategic pillars — Educate, Facilitate and Investigate — provide the structure for the remainder of the report beginning with the Educate pillar.





EDUCATE

One of the Office's primary objectives is to raise awareness and exchange information with procurement stakeholders who contact us. This is the basis for our Educate pillar.

In keeping with the Standards of Practice of the International Ombudsman Association which states "... [t]he Ombudsman functions on an informal basis...engaging in informal third-party intervention," our approach is to, first and foremost, provide information in a prompt and personalized manner.

Accordingly, of the 233 procurement-related contacts, 121 (52%) were cases where providing procurement-related information or responding to procurement-related questions was sufficient.

The remaining 112 (48%) involved cases of suppliers raising, or wanting to discuss, procurement issues. Experience has demonstrated that when dealing with these suppliers, few are contacting us with the specific intent of filing a complaint. Most are exasperated and simply want information or an explanation from an impartial, neutral third party.

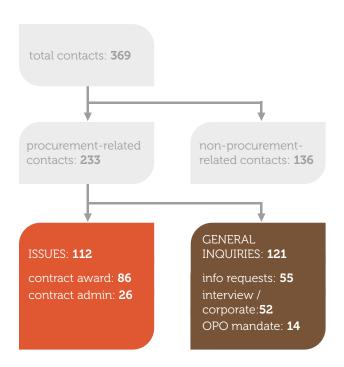


Diagram 3 illustrates that the number of these types of contacts has remained stable for the past three years

The breakdown of the 112 issues has also remained relatively stable with 86 issues (77%) related to contract award and 26 issues (23%) related to contract administration.

DIAGRAM 3



DIAGRAM 4

TOP PROCUREMENT - RELATED ISSUES	2010-2011	2011-2012	2012-2013
Evaluation and Selection Plan (e.g. restrictive criteria or biased rating method)	29	32	28
Evaluation of Bids (e.g. unfair evaluation process)	33	22	28
Procurement Strategy (e.g. non-competitive)	19	27	26
Statement of Work or Specification (e.g. unclear or biased)	13	24	13
Contract Execution (e.g. altering the contract)	16	14	13
Payment (e.g. late payments)	10	6 (not in top 6)	13

^{*} The number of "top-procurement-related issues" for 2012-2013 totals 121, which differs from the 112 issues-related contacts. This discrepancy is due to the fact that multiple procurement issues are often identified through a single contact.

Diagram 4 illustrates the most common issues brought forward by suppliers. This list is consistent with the previous year, with five of the six issues remaining the same. The one exception is an increase in the number of suppliers complaining of delays in receiving payment from departments, resulting in the return of "Payment" among the top issues.

Coast to Coast Conversations

The other component of the Educate pillar relates to the Office's outreach activities. Consistent with our goal of implementing a more robust outreach program geared to engaging a broader spectrum of our clients and stakeholders, we participated in twice as many events as in the previous year. As federal procurement is not limited to the National Capital Region, neither are our services or outreach activities. Sharing and gathering information by attending stakeholder events across the country is a fundamental part of the Office's outreach approach. Among these events were meetings with chambers of commerce and boards of trade from Moncton to Vancouver, with Members of Parliament and their staff, and with federal procurement specialists and program managers, as well as participation in major conferences,

including the Canadian Public Procurement Council (CPPC) National Forum and the Canadian Institute for Procurement and Materiel Management (CIPMM) National Workshop. These events and meetings were geared to inform Canadian businesses, business associations, chambers of commerce, boards of trade, parliamentarians, and federal procurement specialists and program managers of the Office's services as well as to solicit feedback on the procurement system and procurement issues.

THINGS TO MAKE YOU SCRATCH YOUR HEAD...

How exactly does a company drive heavy equipment?

In response to a contract opportunity which included a requirement for a certification to drive heavy equipment, the supplier's bid was deemed non-responsive because the certification they provided was in an individual's name and not the company's name.

These meetings and events have not only allowed for the exchange of information, but have assisted us in building relationships and enhanced our understanding of stakeholder issues and concerns. Some highlights of the type of issues raised with us include:

Suppliers

- Concerned about bids being deemed non-compliant for what they viewed as insignificant administrative shortcomings.
- Frustrated by departments that were unwilling to participate in a debriefing meeting to discuss the shortcomings of the supplier's unsuccessful bid after the award of a contract.
- Spoke of situations in which they cannot bid on a federal contract without the necessary security clearance yet cannot be sponsored by a department because they do not have a federal contract or a reasonable prospect of winning a contract.
- Suggested they were challenged by the complexity, lack of timeliness, and absence of standardization of the federal procurement system as well as the lack of communication.
 Many did not know who to speak to or where to find information.
- Have a perception that contracts had been awarded to non-responsive bidders or bidders who had overstated or fabricated qualifications in their bids. Some questioned whether there were consequences to providing false information as it did not appear that information such as qualifications was adequately verified by departments.

Federal Officials

- Concerned that procurement training was not targeting those other than procurement specialists, such as program managers and others who are also involved in the procurement process.
- Advocated for the integration of procurement, including requirements and

- timelines, into departmental and business planning cycles to prevent delays and minimize risks.
- Suggested there is a lack of awareness of the complexity of procurement and the many policy and procedural requirements, which take time to meet when putting a contract in place. Examples were given of program representatives arriving at the contracting unit at the "last minute" and expecting procurement specialists to "just put a contract in place."

We also heard from departments about some good practices they are implementing to address some of these issues. Examples include:

- procurement training for program managers and senior officials (lunch hour course, oneon-one or online self-learning tools);
- the development of internal service standards for procurement groups;
- the development of standardized statements of work and bid evaluation criteria for common purchases; and
- the identification of typical timelines for different types of procurement.

Beyond our Borders

The concept of a Procurement Ombudsman appears to be attracting international interest as is evidenced by invitations for the Ombudsman to present to foreign governments:

- We hosted two Chinese government delegations interested in learning about OPO's mandate, services and role in federal procurement.
- The Ombudsman accepted an invitation from Ambassador Allan Culham,

Permanent Representative of Canada to the Organization of American States (OAS) in Washington, DC, to speak to OAS representatives at a seminar on effective public management, including best practices in procurement.

 The Ombudsman accepted an invitation from the Institute for Competition and Procurement Studies at Bangor University, Wales, United Kingdom, to speak at an annual "Procurement Week" event hosted by the Institute. The event was attended by delegates from countries across the European Union working in procurement. The Institute subsequently offered the Procurement Ombudsman an executive fellowship with its Academy of Procurement Professionals.

Each of these events provided an opportunity to network with foreign procurement specialists, learn about international procurement trends and innovation, and share information on Canada's approach to federal procurement, including OPO's role in promoting fairness, openness and transparency.





FACILITATE

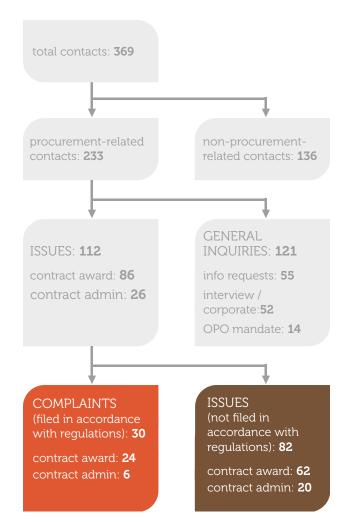
While in many cases we are able to deal with issues by providing information and answering questions, there were cases where this was not sufficient. In these instances, we strive to find ways to address the issues as quickly and simply as possible. Often this involves facilitating dialogue between the supplier and the department or agency. As an ombudsman office, our impartial and independent status allows us to help the parties discuss concerns in an honest and straightforward manner while clarifying issues and exploring divergent perspectives.

OPO's approach in handling procurementrelated issues is prescribed by the Procurement Ombudsman Regulations, which provide the parameters for the Office's activities. To be reviewed by the Office, complaints must be filed in accordance with the criteria established in the Regulations. Of the 112 issues brought to our attention, 30 (27%) complaints were filed in accordance with the Regulations; 24 of these 30 complaints pertained to the award of contracts while the remaining 6 pertained to the administration of contracts. In the case of complaints regarding either the award or administration of contracts, the Procurement Ombudsman has 10 working days after the complaint is considered filed to determine whether to review (i.e. investigate) the complaint. These 10 working days are used by OPO to continue to facilitate a resolution to the issues raised in the complaint.

"We appreciate all your timely support and efforts to bringing this to resolution."

— Supplier

The remaining 82 (73%) were not filed in accordance with the *Regulations*. These issues were either addressed by facilitating dialogue between the supplier and department or represent cases where suppliers raised an issue with us but did not want to escalate it further.



Examples of our ability to help resolve issues through our facilitation role include:

Travel Miles not accepted?

Suppliers were invited to bid on a contract opportunity, which required the costs of travel be included in the bid. However, suppliers were not all located in the same geographic area, thereby

creating an unlevel playing field in the cost of potential travel. A supplier raised this issue with OPO, questioning the fairness of this requirement.

Following our intervention, the contracting department removed the requirement of having to include travel costs in the financial proposal.

Congratulations... sorry not you.

A contract was issued to a supplier and the next day the same supplier was told it was a mistake. When the supplier questioned what happened, the department's explanations raised more questions for the supplier, who then contacted OPO requesting assistance. After our intervention, the department asked us to organize a debriefing meeting between the two parties. As a result of this meeting, the situation was resolved.

Are you seeing double?

A contract opportunity stated suppliers could not submit more than one bid (i.e. independently and then again as part of a joint bid). Without his consent, a supplier's company was listed as a subconsultant in another supplier's bid. As a result, the supplier's own bid was deemed non-responsive. The supplier felt the strict interpretation of the clause was unfair. With our intervention, the department realized what the issue was, reversed its decision and evaluated the supplier's bid.

Deserving of a closer look....

The Office was contacted by a supplier who raised concerns about the government's approach to procuring a particular good. This supplier was concerned about the potential negative implications on their business. Upon consideration, it was determined the nature of the supplier's concerns were not within OPO's mandate to review.

However, the Office undertook research and analysis on the concerns raised, consulting both publicly available information and internal-to-government documents. The Office advised the supplier of the analysis and offered options for the supplier to consider if they wished to pursue the concerns. In addition, the Office contacted relevant federal departments to bring the supplier's concerns to the attention of senior decision-makers in the federal public service.

"From our perspective we were able to discuss issues as adults that needed to be reviewed. To us it was a worthwhile experience. I would like to take this opportunity to thank all individuals who were involved in this process."

- Supplier

Helping to Resolve Contractual Disputes

We are occasionally approached because a disagreement has arisen over the interpretation of an existing contract between a supplier and a department. The disagreement typically revolves around vaque or ambiguous clauses in the contract's terms and conditions. In such cases, either party to the contract can request our Alternative Dispute Resolution (ADR) services. This service helps disputing parties avoid legal action by allowing them to discuss disagreements in a non-confrontational manner. Our ultimate goal in providing this service is to help the parties resolve the disagreement while restoring their business relationships and maintaining the original intent of the contract (whereby the department or agency receives the purchased good or service and the supplier is appropriately remunerated.) Our no-fee service has proven to:

allow parties to avoid lengthy and costly litigation;

- allow for creative, compromise-based solutions;
- allow parties to have greater control over outcomes; and
- provide the opportunity to reach a legally binding settlement.

As illustrated in Diagram 5, this past year we received four requests for ADR. An additional fifth case, initiated in 2011-2012, was also completed.

THINGS TO MAKE YOU SCRATCH YOUR HEAD...

Expiry date: it's not only milk that goes bad!

Due to an extended evaluation phase, the department sent e-mails to bidding suppliers requesting an extension to the validity period of their bids. The department did not receive a response from one of these suppliers. Looking for a status regarding the solicitation process, this supplier contacted the department, which informed the supplier that due to not having received a confirmation to extend the validity period, the supplier's bid had expired and would no longer be considered. However, responses were not mandatory and the consequences of not responding were not stated by the department.

DIAGRAM 5

TOTAL ADR FILES	OUTSIDE OPO	DEPARTMENT DECLINED	REQUEST	ADR CONDUCTED + SETTLEMENT REACHED
2012-2013	JURISDICTION	TO PARTICIPATE	WITHDRAWN	
4	2	1	1	1*

^{*}ADR case initiated in 2011-2012 but completed in 2012-2013

Of the four requests for Alternative Dispute Resolution services:

- two could not be accommodated as they fell outside of the Ombudsman's jurisdiction (in both of these cases the issue was brought to the attention of the Deputy Head of the organization);
- one supplier request was declined by the department; and
- one supplier request was withdrawn.

The ADR service, launched in 2011-2012, resulted in a settlement being reached. The following is a summary of that case:

The Office received a request from a supplier with concerns regarding a disagreement with a department over the process used to obtain the services of a driver through the Temporary Help Services contracting vehicle. The individual (i.e.

the driver) was subsequently hired on a permanent basis by the department and the supplier felt entitled to compensation in the form of a finder's fee as per the terms and conditions of the contracting vehicle. Although the department felt there was no obligation or legal basis for the dispute, they agreed to participate in an ADR process as a show of good will. The process produced a mutually agreed-upon settlement.



INVESTIGATE

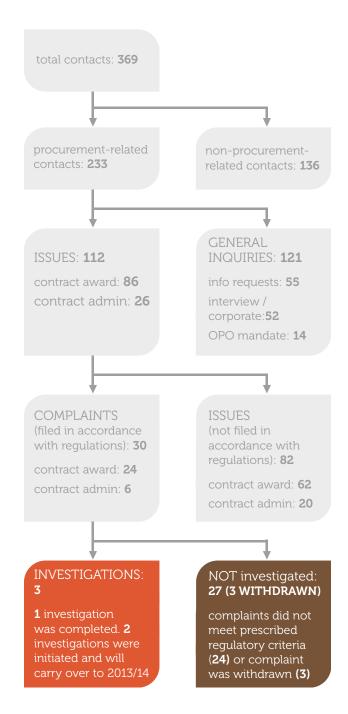
Reviewing Supplier Complaints

When suppliers bring issues to our attention, our goal is to address their concerns as expeditiously as possible. In most instances, we address the issue through our education and facilitation roles. However, there are situations where neither is sufficient or suitable to resolving the issue. In instances when facilitation has proven unsuccessful and the supplier chooses to pursue the matter further, their complaint must be filed in accordance with the *Procurement Ombudsman Regulations*.

Any complaint filed in accordance with the *Regulations* is then assessed to ensure it meets the prescribed regulatory criteria (see Diagram 6). The *Regulations* direct that any complaint which meets the prescribed regulatory criteria is to be reviewed (i.e. investigated).

This past year, 30 complaints were filed in accordance with the *Procurement Ombudsman Regulations*. Of the 30, 27 were either withdrawn (e.g. issue resolved within the 10 days through facilitation), or did not meet the regulatory criteria and could not be reviewed (e.g. contract value exceeded OPO dollar thresholds, complaint directed at an agency or Crown Corporation outside of the Office's jurisdiction).

In cases where the regulatory criteria are not met, we will, at a minimum, bring the issue to the attention of the Deputy Head of the department or agency. As a precautionary measure, we have also begun to subject all written complaints to an expanded assessment to determine if they include any supplementary issues (i.e. in addition to those identified by the supplier.) In instances where a complaint does not meet the regulatory criteria for review, OPO may still identify issues which warrant further action.



For any complaint that meets the prescribed regulatory criteria and is reviewed, the Ombudsman is required to provide findings and recommendations within 120 days of the filing of the complaint.

This past year, three complaints met the requirements prescribed by the *Regulations*. Of these three, one investigation was completed and an additional two were initiated and will carry over to 2013-2014. A summary of the investigation completed in 2012-2013 follows:

Investigation Summary

SUPPLIER'S BID WRONGFULLY DEEMED NON-COMPLIANT ON THE BASIS OF UNDISCLOSED EVALUATION CRITERIA

A supplier filed a complaint claiming:

- the solicitation documents did not provide the required breakdown of the allocation of points;
- the evaluation criteria did not specify the required minimum score;
- the department launched another round of solicitations without considering the supplier's bid; and
- the supplier was denied a request for a formal debriefing following the award of the contract.

Among the remedies requested by the supplier was compensation.

Under section 13(1) of the *Procurement Ombudsman Regulations*, the Ombudsman can recommend the award of compensation if certain conditions are met. In making such a recommendation, the Procurement Ombudsman is required to consider several factors, including whether the complainant submitted a bid or was prevented from doing so; the likelihood that the complainant would have been awarded the contract if it were not for the actions of the department; and the degree to which the complainant was prejudiced.

The review found evidence to support all four allegations. In turn, the department acknowledged

THINGS TO MAKE YOU SCRATCH YOUR HEAD...

When did submitting proposals become a race?

A contracting process resulted in two suppliers submitting the same person to do the work. The department informed one of the two suppliers that this was not acceptable and that the supplier's bid had been rejected because the other bid was submitted first.

that the procurement process had been faulty. Based on the *Procurement Ombudsman Regulations*, however, the Procurement Ombudsman could not recommend compensation. Specifically, it was determined that if the supplier's bid had been evaluated against the evaluation criteria as presented in the solicitation documents, the bid would have fallen short. It was also concluded that all bidders were treated equally and that the complainant was provided the same opportunity as the other bidders.

DIAGRAM 6

For OPO to review a complaint regarding contract award, it must meet the following regulatory criteria:

- Complainant is a Canadian supplier.
- Complaint is filed in writing, within prescribed timeframes.
- Contract has been awarded.
- Contract value is less than \$25K for goods or less than \$100K for services.
- Department falls under the jurisdiction of the Ombudsman.
- Applicability of Agreement on Internal Trade, except for dollar thresholds.
- Facts or grounds of the complaint are not before the Canadian International Trade Tribunal or the courts.
- Reasonable grounds to believe that the contract was not awarded in accordance with regulations made under the Financial Administration Act.

Complaints on the administration of contracts must meet some of the above criteria (however, no dollar thresholds apply). Additional regulatory criteria include:

- Supplier must have been awarded the contract to which the complaint relates.
- Complaint cannot be about the application/ interpretation of terms and conditions (in these cases, Alternative Dispute Resolution (ADR) services are available.)

For the complete list of criteria, please consult the *Procurement Ombudsman Regulations*.

Reviewing Government Procurement Practices

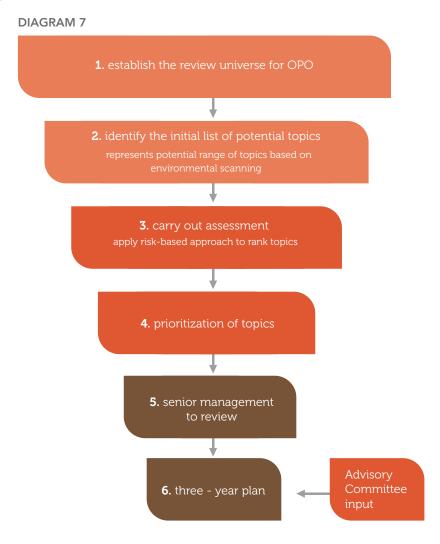
Another element of our Investigate pillar is the review of the procurement practices of departments for acquiring materiel and services. These reviews are intended to examine systemic issues to assess the fairness, openness and transparency of procurement practices and make recommendations to the relevant department for improvement. We determine our practice review topics in two ways:

- through the development of a three-year review plan and
- 2. through consideration of the issues raised by stakeholders.

1) THREE-YEAR PLAN

OPO updated the way procurement practice review topics are selected. The update included enhancing our ability to monitor for potential procurement issues, updating our topic-selection criteria, developing a draft three-year plan, and researching the feasibility of establishing an external advisory committee to provide independent feedback on that plan.

Diagram 7 highlights the six key phases of the updated methodology used for the selection of procurement practice review topics.



The starting point for the practice review topic selection process was to establish the review universe. The review universe represents all potential areas of review activities. The review universe was based on an assessment of the procurement areas where inherent risks may exist.

A scanning exercise was then conducted to gather and analyze available information on the procurement areas contained within the review universe. This scanning process included, but was not limited to, analyzing the following:

- Supplier complaints received by the Office;
- Issues identified by suppliers, federal officials, professional organizations, and parliamentarians through OPO outreach activities; and
- Information gleaned from publications on national and international procurement issues, trends and developments.

An initial list of potential topics was derived from this scanning process.

The list of initial topics was assessed by a multidisciplinary team of procurement, communications, and quality and risk management specialists in OPO. Risk-based assessment criteria were applied to each topic. During this time, OPO also consulted with other oversight bodies to minimize overlap and workload implications to departments, as well as with the largest procuring departments to obtain their views on potential risks to the procurement system.

This process has lead to the development of a three-year plan of procurement practice review topics which will be reviewed by the external advisory committee and then implemented over the next three years.

2) ISSUES RAISED BY STAKEHOLDERS

Section 4 of our Regulations allows the Procurement Ombudsman to "review the practices of a department for acquiring material and services...if there are reasonable grounds to do so..." There are typically two ways that enable the Ombudsman to establish the required "reasonable grounds" to launch a review:

- A. From concerned individuals raising potential issues regarding a particular procurement process or a series of specific contracts. We analyze information made available to us to determine if there is any basis for the issues.
- B. We subject every written complaint to a comprehensive assessment to determine whether there are supplementary issues to be examined in addition to those identified by the supplier. These expanded assessments are used to determine whether there are risks or issues that may be systemic in nature within a department or the procurement process.

The focus of the expanded assessment is to explore every option available to the Office to address potential issues. While the expanded assessment is intended to determine whether there are reasonable grounds to launch a practice review, it can also lead to other actions including:

- conducting a study or an analysis; or
- advising the department of the nature of the issues for appropriate action.

Last year, two cases were brought to the Ombudsman's attention by stakeholders where the required "reasonable grounds" was established and reviews were launched:

Procurement Practice Review Summaries

ACQUISITION OF TRAINING SERVICES BY A DEPARTMENT

The Office received allegations and supporting information alleging favouritism in the award of contracts. The complaint identified a number of contracts for specific subject-matter training issued on a non-competitive (i.e. sole source) basis to the same supplier over a two-year period.

A review was initiated to determine whether the procurement processes to aquire these services were fair, open and transparent. The Office completed an analysis of the procurement files while taking into consideration the federal legislative, regulatory and policy framework relevant to the 12 contracts in question.

The review determined the concerns raised by the stakeholder to be founded and identified systemic issues within the procurement practices used by the department to acquire training services.

The department was given an opportunity to comment on the findings of the report. In its response, the department stated that a management action plan had been developed and measures taken to address the issues identified in the report.

ACQUISITION OF TEMPORARY HELP SERVICES BY A DEPARTMENT

OPO received allegations and supporting information alleging a department had shown favouritism in awarding repetitive contracts to particular consultants. A review was initiated to assess whether the department's activities supported fairness, openness and transparency and adhered to applicable policies.

The Office concluded the department did not always follow its own contracting policies and guidelines or those of the Treasury Board.

The Office recommended the department review, update as required and fully implement the organization's procurement policies and associated governance framework to ensure the Treasury Board Contracting Policy and related requirements are being met.

The department informed OPO that it has taken a number of measures to address the concerns highlighted in the review.

FOLLOW-UP REVIEW

Annual follow-up reviews are conducted to determine what action federal departments and agencies have taken in response to recommendations contained in our previous practice reviews. Follow-up reviews provide an opportunity to share information on improvements being implemented in response to OPO recommendations which other departments and agencies could emulate. Information on these improvements also provides the Office with an indicator of the usefulness and relevance of its work.

Last year we assessed recommendations contained in reports on procurement practice reviews conducted in 2009-2010 involving fifteen federal departments and agencies. All 15 departments and agencies participated in the follow-up process and reported on the implementation of changes designed to improve their procurement practices.

At the time of the follow-up review, implementation of many of the departmental action plans was near completion. The report highlights specific actions being taken by the departments and agencies to improve fairness, openness and transparency in their procurement practices.



SPECIAL INITIATIVES

Formative Evaluation

As outlined in the 2011-2012 annual report, an independent evaluation was carried out on the effectiveness of the Office during its first three years of operation. The evaluation was consistent with Treasury Board requirements to periodically assess the value for money of federal programs.

The evaluation concluded that there is an ongoing need for the services being provided by OPO and that the mandate has been implemented as intended. The report highlighted three particular areas where additional analysis should be undertaken:

- increasing the extent of use of OPO
 Alternate Dispute Resolution (ADR)
 processes such as making it compulsory for government departments to participate in an ADR process once it has been requested by a supplier;
- assessing the advantages and disadvantages of expanding the mandate of OPO; and
- assessing the most appropriate communications strategy to maximize awareness of OPO among suppliers to the federal government.

Work in these areas is at various stages of completion, with the analysis of our communications approach being recently completed.

Communications Assessment

We assessed whether our current communications strategy had been effectively designed to maximize awareness of OPO among suppliers. The resulting report confirmed our suspicions—supplier awareness of our Office and services continues to be low. We are pursuing several initiatives to address the report's suggestions including: making greater use of our website and social media; increasing our presence on websites and in publications of other procurement-related organizations; and dedicating additional internal resources to the identification and management of events designed to raise awareness of the Office among Canadian suppliers.

Moving forward in 2013- 2014, we will continue our work in the areas identified in the evaluation report. Continuous improvement in the way we work and promote our services will help us better serve suppliers and our stakeholders.

APPENDIX A

APPENDIX A

Statement of Operations for the year ended March 31, 2013

Statement of Operations

EXPENSES	2012-2013
	(\$000)
Salaries and Employee Benefits	3,072
Professional Services	400
Operating Expenses	53
Information and Communication	13
Materials and Supplies	28
Corporate Services provided by PWGSC (note 3)	314
TOTAL	3 , 880

The following notes are an integral part of the Statement of Operations.

OFFICE OF THE PROCUREMENT OMBUDSMAN

NOTES TO THE STATEMENT OF OPERATIONS FOR THE YEAR ENDED MARCH 31, 2013

1. Authority and objective

The position of Procurement Ombudsman was created through the Federal Accountability Act and established through amendments to the Department of Public Works and Government Services Act. OPO is an independent organization with a government-wide mandate, which is defined in the Procurement Ombudsman Regulations. Its overall objective is to ensure the fairness, openness and transparency of government procurement.

2. Parliamentary authority

The funding approved by the Treasury Board for the operation of the Office of the Procurement Ombudsman is part of Public Works and Government Services Canada's (PWGSC's) appropriation, and consequently, the Office is subject to the legislative, regulatory and policy frameworks that govern PWGSC. Nonetheless, implicit in the nature and purpose of the Office is the need for OPO to fulfill its mandate in an independent fashion, and be seen to do so, by maintaining an arm's-length relationship with PWGSC.

3. Related party transactions

CORPORATE SERVICES PROVIDED BY PWGSC	(\$000)
Finance	89
Human Resources	89
Information Technology	129
Other	7
TOTAL	314

4. Comparative figures

EXPENSES	2012-2013	2011-2012
		(\$000)
Salaries and Employee Benefits	3,072	2,589
Professional Services	400	480
Operating Expenses	53	38
Information and Communication	13	30
Materials and Supplies	28	49
Corporate Services Provided by PWGSC	314	428
TOTAL	3 , 880	3,614