



Office of the Procurement  
Ombudsman

Bureau de l'ombudsman  
de l'approvisionnement

# ANNUAL REPORT

2016–2017

OFFICE OF THE PROCUREMENT OMBUDSMAN

Promoting Fairness, Openness and Transparency  
in Federal Procurement

Canada 

## OFFICE OF THE PROCUREMENT OMBUDSMAN

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## THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT

Dear Minister,

Pursuant to paragraph 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 2016–2017 fiscal year.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lorenzo Ieraci', written in a cursive style.

Lorenzo Ieraci  
Interim Procurement Ombudsman  
Ottawa, July 2017

## Our Mission

To promote fairness, openness and transparency in federal procurement.

### **Fairness**

Providing equal treatment to all current and potential suppliers.

### **Openness**

Providing all potential suppliers with the opportunity to submit bids for government procurement.

### **Transparency**

Providing information to Canadians in a timely manner that facilitates public scrutiny of the decisions made and actions undertaken.

## Our Mandate

The *Department of Public Works and Government Services Act* provides the authorities for the Procurement Ombudsman to exercise his mandate as follows:

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

## Our Values

Office of the Procurement Ombudsman employees are guided in their work and their professional conduct by committing to the values of respect, impartiality, professionalism and transparency.

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on March 31, 2017



My experience in 2016–2017 indicates that federal organizations seem increasingly willing to allow us to try to help resolve matters; something I hope will continue and expand in the future.”

## Message from the Interim Procurement Ombudsman

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It is an honour to present the 2016–2017 Annual Report for the Office of the Procurement Ombudsman—a report we’ve changed to make it easier to read on screen (whether computer, tablet or smartphone) and for which we’ve printed a minimal number of copies to decrease our environmental impact.

This report highlights the work undertaken by our Office from April 1, 2016 to March 31, 2017 (the 2016–2017 fiscal year), summarizes the reports issued, and provides examples of how we sought to help everyone who contacted our Office. In particular, I take pride in the work we did to quickly and meaningfully respond to questions that were raised to us, and to help Canadian suppliers and federal organizations resolve disputes. Our Office’s experience demonstrates that both suppliers and federal organizations benefit from working out disputes: it eliminates the time and energy associated with escalation within organizations, avoids costly and time-consuming litigation and allows both sides to get back to business. Page 21 of this report highlights examples where our Office was able to assist in addressing matters informally prior to launching our formal dispute resolution process. Those were instances where federal organizations actively engaged with our Office, thereby allowing us to help resolve disputes quickly. My experience in 2016–2017 indicates that federal organizations seem increasingly willing to allow us to try to help resolve matters; something I hope will continue and expand in the future.

In addition, this report highlights the views and feedback provided to us by Canadian suppliers and federal officials, whether they contacted us directly or through our numerous outreach efforts. Looking back on 2016–2017, and more specifically the discussions I had with both groups, there are three issues that stand out for me: federal procurement capacity, standing offers and the challenges of simplifying procurement.

### **Federal procurement capacity**

The first, federal procurement capacity, is something I have heard about since I joined this Office in 2012. I noted in the past year that suppliers and federal officials were able to more precisely articulate the impacts that a lack of procurement capacity creates in and across federal organizations, and on suppliers trying to do business with them.

The issue of capacity is intriguing in that, unlike many procurement topics, it appears to generate some consensus among suppliers, procurement specialists and program managers. In the past year, it has become apparent to me through discussions with these groups that many (if not most) federal organizations do not have sufficient procurement staff or have staff that do not have the experience

or knowledge needed to tackle the volume and complexity of federal procurement in a way that is fair, open and transparent. The impacts include delays during various stages of the procurement process, and concerns of an increasing reliance on non-specialists to undertake some procurements given the limited number of procurement specialists. In addition, suppliers invest time asking questions or obtaining clarifications as they are dealing with procurement staff who are not always fully knowledgeable about their given industry.

The lack of capacity results in experienced and knowledgeable procurement specialists being highly sought after, with federal organizations routinely cannibalizing staff from one-another. And the situation may get worse; data indicates that the procurement community has one of the highest percentages of staff eligible to retire in the next five years. Without a concerted effort on the part of all federal organizations, and more importantly a coordinated approach to recruitment and development of procurement specialists across organizations, capacity problems and associated impacts will continue to grow.

## **Standing offers**

The second issue is standing offers, a topic this Office has raised on numerous occasions. While many of the concerns previously raised remain valid, I will focus on one particular element, namely that there are no guarantees of revenue for suppliers even once they have qualified on these tools.

Standing offers are procurement tools on which suppliers must qualify to provide goods or services to federal organizations on an “as and when required basis”. When a good or service is requested by the federal organization, that transaction (referred to as a “call-up” in procurement lingo) constitutes the contract. Standing offers are established to facilitate the procurement of frequently purchased goods or services. The purported attributes are that these tools should reduce paperwork, lower the costs of goods and services, expedite the procurement process and reduce the number of solicitations.

While these attributes (if materialized) would be of benefit to federal organizations and suppliers, they come at a higher risk to suppliers. Suppliers must invest time and energy to submit proposals to qualify on these tools. While this is a standard element of procurement—suppliers have to prepare proposals for any solicitation, and there is no guarantee they will win the resulting contract—qualifying on a standing offer does not mean that suppliers have “won” a contract... because it is not a contract. Therefore suppliers who qualified on standing offers have no guarantee they will obtain any work as 1) with the exception of mandatory commodities, there is nothing requiring federal organizations to actually use the standing offers they have established, and 2) if organizations do use standing offers, there is no certainty that a given supplier will obtain work. But here’s the rub: if they want the business, suppliers need to be ready to provide the goods or services within very short timeframes; I have seen many standing offers with a 72-hour turnaround time. That means suppliers need to make investments in inventory (for goods) or ensure they have access to quality resources (for services) to be able to deliver quickly. All this with no guarantee of business or revenue.

In addition, suppliers have often told me that they must compete and qualify on multiple tools across multiple federal organizations to deliver essentially the same goods or services. These suppliers are, more often than not, small and medium-sized companies eager to obtain work from federal organizations, so they actively work to qualify on as many tools as possible. And once they have qualified? They play the waiting game and hope they will get a call-up... and hope the federal organization will not choose to obtain the good or service using an approach other than the standing offer they have qualified on.



There are potential solutions to some of these concerns—for example, creating a government-wide centralized repository of all standing offers issued by federal organizations, which could result in a decrease in the duplication of these tools across organizations. More fundamentally, however, there is a need for research and analysis to determine if the purported benefits of standing offers are actually materializing. Because if they aren't, then federal organizations need to carefully consider why they are placing higher risks on Canadian suppliers through these tools.

### **Challenges in simplifying federal procurement**

In the last year, I became aware of a number of initiatives being explored by federal organizations to modernize and simplify federal procurement. As federal organizations move forward with these initiatives, my hope is they will keep in mind that procurement not only needs to be simplified, but also has to be clear and comprehensive. This would ensure suppliers bidding on federal opportunities have a clear understanding of what is expected of them, both in terms of submitting a bid and of the work that will be required once the contract is awarded. To do so, procurement documents developed by federal organizations need to be comprehensive and understandable by most Canadians or, at the very least, suppliers within a given industry.



One of the concerns I routinely hear from Canadian suppliers, in particular small and medium-sized companies, is that federal procurement is complex. Many point to federal solicitations that often number dozens, sometimes hundreds, of pages as examples. And in some cases, suppliers had not realized these documents do not actually include standard instructions or general conditions, which are incorporated by reference. That means the documents are not only much longer, but also that suppliers have to access websites to see the totality of what they are committing to when submitting a bid and, if they are ultimately successful, signing a contract. Many suppliers I spoke with have described the text in solicitations and contracts as being legalistic and, in some cases, incomprehensible. Often, they claim that the clauses or references they point to were written by lawyers for lawyers.

Federal officials, on the other hand, point to the fact that documents are very detailed because federal organizations must fully and accurately disclose the details of the procurement process and the resulting contract. This is a principle established in court and tribunal decisions and reinforced in reviews undertaken by our Office. Federal officials have told me informally they don't want to make solicitation and contract documents overly detailed, but that they have no choice in order to respect this principle and protect their organization from procurement-related challenges.

The conundrum, therefore, is to develop procurement documents that are clear and simple enough for the suppliers within a given industry to use while ensuring these documents are sufficiently detailed and precise. This will not be an easy task. But since Canadians were ingenious enough to, among other things, invent the snowblower, discover insulin, build the Canadarm and create the *poutine*, then it is not surprising that suppliers expect their government to find ways to simplify federal procurement.

## Moving forward

Moving into 2017–2018, our Office will continue to listen to all those interested in federal procurement. We will also continue to assist Canadian suppliers and federal organizations in resolving their issues, concerns or disputes as quickly and informally as possible. After all, our Office's motto is "we are here to help". We hope Canadian suppliers and federal organizations will increasingly give us the opportunity to do so.



Lorenzo Ieraci  
Interim Procurement Ombudsman



## Profile of contacts

“ We had a great discussion at the town hall. I really appreciate how open suppliers are with sharing their experiences, as this allows us to share their views and concerns with senior decision-makers.”

– OPO official

**463** Total Contacts

**283**  
Procurement-Related

**180**  
Not Procurement-Related

**EDUCATE**

**FACILITATE**

**INVESTIGATE**

**122** General inquiries  
Doing business with the federal government: 31  
OPO mandate & services: 25  
Procurement rules & process: 66

**121**  
Contacts

**10**  
ADR requests

**30** Written complaints  
Contract award: 25  
Contract administration: 5

Contract award: 94  
Contract admin.: 27

ADRs completed: 1  
Resolved with OPO's help: 5  
Dept. declined: 3  
Ongoing: 1

**23**  
Complaints did not meet regulatory criteria  
Award: 13  
Admin.: 5  
Withdrawn: 5

**7**  
Complaints met regulatory criteria  
Award: 7  
Admin.: 0

1 review completed  
6 reviews carried over to 2017–2018  
*\* 2 additional reviews launched in 2015–2016 were completed in 2016–2017*

# Profile of contacts

In any given year, hundreds of thousands of contracts are entered into by federal organizations and Canadian businesses. When one considers this large volume of procurement activity, the billions of dollars collectively spent by the more than 100 federal organizations involved in procurement, and the rules that make doing business with federal organizations different from doing business with the private sector, it is not surprising that issues occasionally arise. That is where the Office of the Procurement Ombudsman (OPO/the Office) comes in.

To help suppliers and federal organizations sort through the issues that arise in federal procurement, the Office uses its position as a neutral, arm's-length organization specializing in federal procurement to encourage open communication, foster the sharing of good practices, and promote fairness, openness and transparency.

OPO strives to make it as convenient as possible for suppliers and federal officials to contact the Office to raise questions, concerns or share information regarding Canadian federal procurement.

In 2016–2017, the Office registered a total of 463 contacts, an increase of nearly 16% from the previous year. Of the 463 contacts, 180 (39%) were not procurement-related and consisted of inquiries from members of the general public attempting to reach a government organization or experiencing difficulty with a non-procurement government program and not knowing where to turn. Regardless of the nature of the non-procurement issues raised, OPO worked diligently to provide useful information and redirect individuals to an appropriate source that could address their inquiry, question or issue.



Of the 463 contacts, 283 (61%) were procurement-related and ranged from general inquiries to specific complaints. These included:

- questions on how to do business with the federal government;
- inquiries regarding the federal procurement process; and
- specific procurement-related issues.

## Promoting fairness, openness and transparency

The Office's approach to promoting fairness, openness and transparency in federal procurement focusses on three pillars: Educate, Facilitate and Investigate. These pillars provide the structure for understanding OPO's activities and how the Office handled the 283 procurement-related contacts.

### Educate, Facilitate and Investigate



Raise awareness of procurement issues and exchange information



De-escalate disputes and help resolve issues



Examine and review procurement issues



# Educate

“Our team found the presentation very informative this morning.”

– Town hall participant

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# Educate

OPO uses the Educate pillar to engage with a variety of individuals who operate in the federal procurement environment. These individuals most commonly represent small and medium-sized businesses (i.e. suppliers) selling, or hoping to sell, goods or services to federal organizations. Federal officials involved in procurement (i.e. procurement specialists, program managers and federal organizations' senior management) also form important stakeholder groups for OPO.

Much like a two-way street, OPO uses the Educate pillar to both *inform* individuals about the Office's mandate and services, relevant procurement rules and good procurement practices, and *be informed* of the opportunities and challenges experienced by suppliers and officials involved in federal procurement.

## What OPO did to respond to inquiries and requests for information

Whether contacted by telephone, email, letter, fax, social media, website or face-to-face, OPO sought to provide meaningful information in a timely, professional and courteous manner. Of the 283 procurement-related contacts received in 2016–2017, 122 (43%) contacts were addressed by providing information and responding to inquiries. These contacts included questions and inquiries related to:

- how to do business with the federal government;
- OPO's mandate and services; and
- federal procurement rules and processes, including how to obtain security clearances and how to find information on the [Buyandsell.gc.ca](http://Buyandsell.gc.ca) website.

The remaining 161 procurement-related contacts were addressed through the Facilitate and Investigate pillars and are described in subsequent sections of this report.

## What OPO did to raise awareness and share information

In addition to addressing contacts to the Office, OPO participated in 60 outreach events across the country in 2016–2017. These consisted of town hall-style meetings with suppliers and information-sharing sessions with federal organizations arranged by the Office. OPO representatives also attended select conferences and tradeshows to speak with suppliers and federal officials. These events allowed the Office to share information with suppliers, procurement specialists and program managers to foster a greater understanding of procurement, and procurement-related issues or concerns, among all stakeholders. It also allowed the Office to collect information on the views of these groups regarding federal procurement.



# Educate “at a glance”

**79,429**

Number of Twitter impressions



**15**

Number of tradeshows and exhibitions participated in to promote mandate and services



**75,022**

Number of page views on OPO's Website



**20**

Number of Chambers of Commerce / Boards of Trade informed about OPO's mandate and services



**650**

Number of suppliers registered for OPO's town halls



**15**

Number of information-sharing sessions with federal organizations



## Cities visited by OPO for outreach



## What OPO heard

The following are examples of what the Office heard from suppliers and federal officials during outreach events in 2016–2017:

### Shared issues between suppliers and federal officials

**Problematic procurement process:** The procurement process is administratively heavy, complex and lacks flexibility. Standardization and simplifying procurement tools, to the extent possible, could alleviate the complexity and burden of producing solicitations (for procurement officers and program managers) and responding to solicitations (for suppliers).

**To debrief or not to debrief:** Suppliers have raised concerns that debriefs by federal officials often lack the substance and clarity needed to understand decisions made and allow suppliers to improve future bids. On the other hand, federal officials have stated that debriefs are time consuming and may be unnecessary when goods or services are purchased using a lowest price selection and that some suppliers are not interested in learning about the shortfalls of their bids but rather seek to argue decisions.

**A heavy burden to bear:** Liability clauses and mandatory insurance requirements add risks and costs to suppliers, which may decrease the number of businesses willing to compete for federal contracts. In addition, the need for suppliers to secure insurance may delay the start of contracts and negatively impact delivery dates. Mandatory insurance requirements should only be used in instances where there is a clearly defined need.

**Cumbersome clearances:** While some improvements have been made, obtaining security clearances for contractors is a process that remains costly, time-consuming, complicated and cumbersome.

### Suppliers

**Is it worth it?:** It takes a significant investment of time and resources to respond to federal solicitations, even for low dollar-value contracts. This situation is further exacerbated when dealing with standing offers or supply arrangements given there is no guarantee of work even if a supplier qualifies on these tools.

**Restrained by requirements:** National delivery requirements and bundling of multiple goods or services under one solicitation limit opportunities for small and medium-sized Canadian businesses. These requirements act as barriers to bidding on federal contracts given these businesses do not possess the capital or resources required to satisfy such requirements.

**Playing by the same rules:** Subcontractors believe the same rules concerning fairness, openness and transparency should apply to prime contractors when awarding subcontracts since they are funded by taxpayer money.

**Fear of blacklisting:** Suppliers are concerned that raising issues with federal organizations will result in them being blacklisted and prevented from participating in future contracting opportunities.

**Unauthorized usage:** Suppliers have expressed frustration when federal organizations consult them in order to receive industry specific input for their planning. Some suppliers are concerned federal organizations use their “ideas” to better define their requirements and then award contracts to competitors. Some suppliers are also concerned that intellectual property (e.g. engineering drawings) requested as part of a solicitation may be shared with the competitor that has been awarded the contract.

## Procurement Specialists

**Feeling forgotten:** There are no government-wide recruitment and development programs for procurement specialists. Many federal organizations are too small or short-staffed to create internal programs and are looking for centralized leadership to provide government-wide programs.

**Experience is essential:** There are limited experienced procurement specialists to staff key positions. As there is no centralized approach to ensure common levels of experience and knowledge across federal organizations in the procurement community, procurement specialists at the same level could have vastly different levels of experience across different federal organizations.

**Senior management support:** Procurement specialists reported positive client relationships when there is senior management support for procurement. Conversely, reports of poor client relationships occurred where procurement specialists discussed a lack of support or buy-in from their senior management team, as procurement did not seem to be a priority. In addition, procurement specialists indicated senior management support is beneficial in encouraging program managers to learn more about the complexity and timelines associated with procurement processes, which helps avoid issues when planning projects.

**Time to sharpen the tools:** Procurement tools (i.e. standing offers and supply arrangements) for mandatory goods or services (e.g. furniture) can sometimes be cumbersome and complicated to use, especially for low dollar-value contracts. In addition, there is variation in the rules associated with each tool, which raises potential risks of confusion.

**An aging threshold:** Federal organizations are allowed to direct a contract to a supplier if the value of the contract is less than \$25,000. This amount was adopted in the 1980s and has not increased since, despite the loss of purchasing power over the years.

## Program Managers

**Nowhere to turn:** Program managers in some federal organizations feel unsupported as the number of procurement specialists in their organization is limited, resulting in little to no help available to provide guidance on procurement.

**Poor performers:** Poor performing suppliers continue to obtain federal contracts as vendor performance measures seem to be largely non-existent or ineffective in most organizations.

**The long and winding road:** The procurement process takes too long and requires too many senior level decisions or approvals, which further slows the process.

**Getting things right:** Some program managers have identified the benefits and success of involving their procurement team before they intend to purchase goods or services so as to incorporate procurement timelines in their project planning and avoid issues.

**Sharing success:** Since many organizations purchase the same goods and services, effective practices should be shared across federal organizations. This would be beneficial for those who are not experts in the field of procurement.

OPO's outreach activities not only provided the Office with an opportunity to collect the views of those involved in federal procurement, they also allowed representatives from the Office to raise awareness of OPO's mandate and services, including how OPO can help facilitate the resolution of procurement-related issues or disputes.



# Facilitate

“ I am delighted that the matter was resolved in a timely manner, and with a very positive outcome! Your responsiveness and counsel were greatly appreciated; I am happy that we didn't have to formalize any requests through your office.”

– Supplier

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# Facilitate

## What OPO did to help resolve issues

Suppliers contacting OPO with a procurement-related issue are initially encouraged to provide the federal organization in question with the opportunity to respond and address their issue. In many cases, resolutions can most efficiently be achieved through direct communication between the supplier and federal organization.

In situations where a supplier has been unsuccessful in their attempts or is dissatisfied with their interactions with the organization, OPO can assist by playing a “go-between” role. This involves obtaining an understanding of the supplier’s issues and contacting the federal organization to discuss them. Once the Office has obtained the organization’s perspective, the information is relayed back to the supplier. This process is repeated as necessary and, in many cases, the Office succeeds in facilitating a resolution. In addition, OPO is often able to re-establish communication between the supplier and federal organization, enabling them to resolve the issues directly.

Of the 283 procurement-related contacts OPO received in 2016–2017, 121 were contacts where the Office facilitated communications between the supplier and the federal organization. Examples where OPO helped facilitate a resolution include:

### – Playing a “go-between” role

A supplier contacted OPO regarding a solicitation for the establishment of a standing offer. While the solicitation had closed, the standing offer had not been awarded and the supplier was seeking an update. The supplier sought OPO’s help due to the lack of success in obtaining a response from the federal organization despite repeated attempts.

OPO contacted the federal organization and obtained the information the supplier was seeking. The supplier appreciated OPO’s help in obtaining a response, stating “I do appreciate your and OPO’s help in this matter”.

### – Re-establishing communication

A supplier contacted the Office regarding a regret letter sent by a federal organization that stated the supplier’s proposal had failed to satisfy a mandatory requirement and the supplier had therefore not been awarded the contract. The supplier believed the proposal had met all mandatory requirements in the solicitation. OPO encouraged the supplier to try to resolve their concerns directly with the organization in question, however communications had ceased. OPO contacted the organization, who agreed to contact the supplier. The supplier was able to obtain additional information from the organization.

It has become apparent that in playing this “go-between” role, often it isn’t the information OPO provides as much as the recipient hearing it from a neutral source that has no vested interest in the outcome (other than helping resolve the issue). Consequently, the Office plays an important role in helping resolve procurement-related issues before they escalate. OPO’s interest is to help resolve issues as quickly and informally as possible.

When issues cannot be resolved informally, the Office may offer alternative dispute resolution services in instances where a supplier and federal organization have a contract and a dispute has arisen.

# Facilitate “at a glance”

Number of contacts  
by source:

 **230**  
Phone

 **127**  
Emails

 **44**  
Online forms

 **41**  
Share your thoughts  
web-portal

 **11**  
Letters

 **5**  
Outreach  
events

 **5**  
Faxes



## Alternative Dispute Resolution

Of the 283 procurement-related contacts that OPO received in 2016–2017, 10 were written requests for alternative dispute resolution (ADR) services.

The Office provides ADR services when disputes involve the interpretation or application of the terms and conditions of a federal contract. One of the parties to the contract—the supplier or federal organization—must request the services in writing. As OPO’s ADR services are voluntary, both parties to the contract must agree to participate. OPO’s no-fee ADR services offer an opportunity for the parties to come together in a neutral setting to participate in confidential, open and constructive dialogue. More importantly, OPO’s certified mediators do not impose decisions (i.e. arbitrate) in the dispute; rather they walk the participants through a mediation process that should permit the participants to reach a mutually agreeable resolution to the dispute.

When both parties agree to participate, OPO’s certified mediators have a successful track record of helping to mediate disputes and helping the parties re-establish their business relationships.

“ Thank you for your help in making this happen after so many months. Greatly appreciate your intervention. There is no doubt in my mind without your help, I’d still be sitting here wondering when [the federal organization] would act.”

– Supplier

Of the 10 ADR requests received in 2016–2017:

- **1 request for ADR services was initiated and carried into 2017–2018.**
- **3 requests resulted in federal organizations declining to participate in OPO’s ADR services. As OPO’s ADR services require both parties to a federal contract to voluntarily participate, these requests could not proceed.**
- **1 request resulted in an ADR process that was successfully completed, resulting in a settlement agreement:**

OPO received a request for ADR services from a supplier having a dispute with a federal organization about the amount of work requested through a standing offer. While the federal organization had no contractual obligations to the supplier through the standing offer, given it is not a contract, the supplier made important business decisions based on the expected work volumes.

The parties agreed to participate in OPO’s ADR process. Through a face-to-face mediation session and subsequent extensive back and forth between the parties using shuttle mediation, OPO was able to help the parties find a resolution to the dispute.

The lesson learned from this case is that all parties must be clear on their roles, responsibilities and expectations regarding standing offers. Suppliers must understand that anticipated volume of work referenced in a standing offer solicitation is not a guarantee of business. In addition, federal organizations may have the option of obtaining the good or service in question using other means or other procurement vehicles. On the other hand, federal officials must realize that suppliers make business decisions, including substantial investments, based on information found in the solicitation documents and on the assumption that federal organizations will use the standing offers they have



established. Therefore, setting clear expectations, providing accurate anticipated volumes of work and informing suppliers of anticipated changes in a timely manner are important from a supplier perspective.

■ **5 requests were withdrawn by the suppliers after OPO helped parties reach a resolution before a formal ADR process was initiated:**

- ✓ A supplier stated a federal organization had not paid for work completed under the contract and the interest on the overdue payment. OPO contacted the organization, which stated it was processing the work payment and would subsequently look into paying the interest. Shortly thereafter, the supplier received payments for the work and interest.
- ✓ A supplier stated a federal organization was acting in bad faith by attempting to “poach” the supplier's resources by offering to contract with them directly. OPO discussed the issue with both parties, who subsequently agreed to meet to discuss the situation bilaterally.
- ✓ A supplier stated they were not being paid for goods they supplied under the contract. OPO reached out to the federal organization and was told payment could not be completed until a debt arrangement under the contract was finalized, which was handled by another federal organization. As the process was not moving forward, OPO found the appropriate contacts within the federal organizations who could help complete the process and the supplier was paid.
- ✓ A supplier stated a federal organization was not paying for work completed and the contract would be terminated for failure to complete work. OPO reached out to the federal organization and was told the organization would look into the issue and would not be cancelling the contract. The supplier and the federal organization reached a settlement resulting in payment to the supplier.

- ✓ A supplier and federal organization disagreed on whether postage charges would be reimbursed due to a lack of clarity in the contract. OPO reached out to the organization, who then conducted an internal review. The organization proposed a settlement, which was accepted by the supplier.

These five cases demonstrate the Office’s ability to help resolve issues between suppliers and federal officials informally prior to undertaking a formal dispute resolution process. They also reinforce the principle that communication is critical to the resolution of disputes. As a neutral organization, OPO can help suppliers and federal officials resolve their issues thereby bypassing the time and energy needed to respond to issues as they escalate, avoiding costly and time-consuming litigation, and allowing both sides to get back to business.

While OPO has often been effective in facilitating the resolution of issues between suppliers and federal organizations, occasionally the Office is made aware of specific cases, or identifies potential systemic procurement practices, which bring into question the fairness, openness or transparency of federal procurement. In those cases, the Office relies on its third pillar: Investigate.



# Investigate

“It is our intention to leverage lessons learned as a result of your team's findings.”

– Federal official

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**121**  
Contacts

**10**  
ADR requests

**30** Written complaints  
Contract award: 25  
Contract administration: 5

Contract award: 94  
Contract admin.: 27

ADRs completed: 1  
Resolved with OPO's help: 5  
Dept. declined: 3  
Ongoing: 1

**23**  
Complaints did not meet regulatory criteria  
Award: 13  
Admin.: 5  
Withdrawn: 5

**7**  
Complaints met regulatory criteria  
Award: 7  
Admin.: 0

1 review completed  
6 reviews carried over to 2017-2018  
\* 2 additional reviews launched in 2015-2016 were completed in 2016-2017

# Investigate

## What OPO did to review complaints and federal procurement practices

Suppliers with concerns about the award or administration of a federal contract can file a written complaint with the Office. Once OPO receives a written complaint, the Procurement Ombudsman must make a determination on whether to undertake a review within 10 working days.

In making this determination, the Ombudsman is required to assess whether the complaint meets the requirements specified in the *Procurement Ombudsman Regulations* (the Regulations). If a complaint meets the regulatory criteria and falls within the Procurement Ombudsman's jurisdiction (see Table 1), the Ombudsman must launch a review and produce a report. These reports include findings and, if applicable, recommendations for improving the procurement process.

**Table 1: Procurement Ombudsman Regulations**

Criteria related to a complaint regarding the award of a contract include:	Criteria related to a complaint regarding the administration of a contract include:
<ul style="list-style-type: none"><li>- Complainant is a Canadian supplier.</li><li>- Complaint is filed in writing, within prescribed timeframes.</li><li>- Contract has been awarded.</li><li>- Contract value is less than \$25,000 for goods or less than \$100,000 for services.</li><li>- Federal organization falls under the jurisdiction of the Ombudsman.</li><li>- Agreement on Internal Trade is applicable, except for dollar thresholds.</li><li>- Facts or grounds of the complaint are not and have not been before the Canadian International Trade Tribunal or the courts.</li><li>- Reasonable grounds exist to believe the contract was not awarded in accordance with the regulations made under the <i>Financial Administration Act</i>.</li></ul>	<ul style="list-style-type: none"><li>- Complainant is a Canadian supplier.</li><li>- Complaint is filed in writing, within prescribed timeframes.</li><li>- Complainant must have been awarded the contract in question.</li><li>- Complaint cannot be about the application or interpretation of the terms and conditions or about the scope of the work of the contract.</li></ul> <p data-bbox="1296 951 1765 1037">For a complete list of criteria, please consult the <i>Procurement Ombudsman Regulations</i> on the OPO website at <a href="http://www.opo-boa.gc.ca">www.opo-boa.gc.ca</a>.</p>

# Investigate “at a glance”



7

Reviews of complaints launched



3

Reviews of complaints completed

1

Review of complaint recommending compensation



3

Procurement practice reviews completed

8

Recommendations to federal organizations to improve procurement practices



1

Procurement study completed

10

Federal organizations included in OPO reviews:  
Agriculture and Agri-Food Canada  
Canada Border Services Agency  
Canada Revenue Agency  
Health Canada  
Immigration, Refugees and Citizenship Canada  
Indigenous and Northern Affairs Canada  
Natural Resources Canada  
Parks Canada Agency  
Royal Canadian Mounted Police  
Statistics Canada



## Reviews of supplier complaints

Of the 30 written complaints filed with the Office, 25 pertained to the award of a contract while the remaining 5 pertained to the administration of a contract.

Of these 30 written complaints, 23 (77%) did not meet the criteria specified in the Regulations, including 5 which were withdrawn by the suppliers. The remaining 7 written complaints, all pertaining to the award of a contract, met the requirements of the Regulations and reviews were launched. OPO completed one of these reviews in 2016–2017. As the remaining 6 written complaints were submitted towards the end of the fiscal year, they will be completed in 2017–2018 within the 120 working days timeframe specified in the Regulations. OPO also completed two reviews carried over from 2015–2016.

The following are summaries of the 3 reviews of complaints completed in 2016–2017.

### **Request for proposal with unclear estimates impacts a bidding process** *(Launched in 2015–2016 and completed in 2016–2017)*

A supplier filed a complaint regarding the award of a contract for the provision of data entry, accuracy and quality services by a federal organization. The Complainant raised three issues: 1) The methodology used for calculating the bid did not reflect the true scope of the project; 2) The methodology used to evaluate bids had a negative impact on the Complainant's bid; and 3) The format of the financial proposal did not indicate that fixed costs needed to be or should be prorated.

With regard to the first issue, the Procurement Ombudsman found the solicitation contained unclear information regarding the volume of records the winning bidder would be required to process under the contract. The lack of clear and accurate estimates in the solicitation made it difficult for suppliers to determine the "true scope" of the project.

For the second issue, the Ombudsman found no evidence to suggest the methodology used to evaluate bids had a negative impact on the Complainant's bid, and bids were evaluated according to the methodology specified in the solicitation.

Regarding the third concern, the solicitation did not indicate that fixed costs needed to be or should be prorated, and it defined what tasks should be included in the fixed-cost component of bids. In that regard, the format of the financial proposal in the solicitation was clear. However, the lack of a clear estimated volume of work may have made it difficult for suppliers to make informed decisions regarding how to develop their bids.

Although the requirement lacked clarity, all suppliers were provided with the same information to formulate their bids. When evaluating the bids, the federal organization in question followed the evaluation methodology as specified in the solicitation and chose the lower-priced bid, in accordance with the solicitation.

### **Delays impede a supplier's ability to submit a bid** *(Launched in 2015–2016 and completed in 2016–2017)*

A supplier filed a complaint regarding a contract awarded for the provision of access to information consultant services. The Complainant raised three issues: 1) The federal organization did not provide enough time for the supplier to prepare and submit a bid; 2) A rated evaluation criterion was flawed since it was impossible to obtain the maximum number of points; and 3) There were discrepancies between the resources requested through the solicitation and the procurement tool (supply arrangement) being used.

With regard to the first issue, the review revealed the federal organization did invite the Complainant as it had requested. However, it took three business days for the federal organization to respond and send the invitation to the Complainant on a five day



solicitation process. The Complainant therefore had less than 24 hours to prepare and submit a bid for a solicitation that contained numerous evaluation criteria. These actions impeded the Complainant's ability to prepare and submit a bid. Additionally, the federal organization demonstrated inconsistent actions by offering to extend the deadline for submitting bids to one supplier approximately 24 hours before refusing the first of the two requested extensions (by the Complainant and another supplier).

For the second issue, the Procurement Ombudsman noted the *Access to Information Act* did not come into force until 1983, meaning that the maximum number of years of experience a bidder could have was 32 years, thereby making it impossible to obtain the full 40 points for the 35 years of experience specified in the solicitation. The Ombudsman therefore questioned the federal organization's rationale for establishing a level of experience for which full marks could not be obtained and for failing to correct the issue once it was brought to its attention by suppliers during the solicitation period.

Finally, for the third issue, the Ombudsman found a disconnect between the resource classification requested by the federal organization in the solicitation and the information found in the procurement tool (supply arrangement) used in the process. The federal organization sought a resource level that was lower than the one that should have been requested to meet the requirements specified in the solicitation.

The review concluded the federal organization affected the openness of this process by impeding the Complainant's ability to prepare and submit a bid. As well, the federal organization affected the fairness of the process by not treating the Complainant equally in relation to other invited suppliers. Fairness was further affected by the federal organization's inconsistent use of its discretion to extend the solicitation periods for various suppliers invited.

**Ombudsman recommends compensation to bidder that was treated unfairly** (*Launched and completed in 2016–2017*)

A supplier filed a complaint regarding a contract awarded for the provision of audit services. The Complainant raised three issues: 1) There was an inappropriate allocation of points regarding the scoring of a rated criterion; 2) The federal organization used an undisclosed evaluation criterion; and 3) The federal organization’s assumption that the Complainant could not complete the work with the proposed level of effort was inappropriate.

The review revealed that the Complainant’s proposal had been evaluated twice. The result of the first evaluation showed that the Complainant’s proposal was deemed the winner. However, following a re-evaluation, the Complainant’s proposal was ranked second, and therefore the Complainant was not awarded the contract.

In reviewing the Complainant’s first issue, the Procurement Ombudsman noted the federal organization did not award points according to the instructions set out in the solicitation in re-evaluating the Complainant’s proposal, thus failing to adhere to the requirements of the Treasury Board Contracting Policy.

On the second issue, the review showed that while the solicitation explicitly identified the rated sub-criterion in question, in re-evaluating the Complainant’s proposal, the federal organization applied a minimum “critical threshold” that had not been disclosed to bidders. Therefore, the federal organization applied an undisclosed evaluation factor in the re-evaluation of the Complainant’s proposal.

On the third issue, the Ombudsman noted concerns with the federal organization’s explanation for how it awarded points to the Complainant’s proposal during the re-evaluation. The explanation failed to provide a reasonable rationale for the federal organization’s concerns regarding the Complainant’s proposed level of effort. It was

therefore inappropriate for the federal organization to assume the Complainant could not complete the work with the proposed level of effort.

The Complainant would have been awarded the contract had the federal organization appropriately applied the evaluation criteria or not used an undisclosed evaluation factor. As such, the Procurement Ombudsman recommended the federal organization pay compensation to the Complainant.

Given the fairness and transparency of this procurement process were prejudiced, the Ombudsman also recommended the federal organization take steps to ensure that all individuals directly involved in this procurement process are aware of, and adhere to, obligations under the Treasury Board Contracting Policy.





## Follow-up to the previous Ombudsman's recommendations

The previous Procurement Ombudsman, who served from January 2011 to December 2015, issued 21 review of complaint reports during his tenure, 9 of which included recommendations.

In August 2016, OPO sent letters to the 7 federal organizations regarding the 9 reports in which the previous Procurement Ombudsman issued recommendations<sup>1</sup>. These 9 reports each included recommendations for the federal organizations to improve their procurement practices or pay compensation to the supplier that had filed the complaint. The August 2016 letters requested information on whether the Ombudsman's recommendations had been implemented.

The responses demonstrated that:

- 3 reports recommended that 3 organizations improve their procurement practices, and all 3 responded indicating they had taken steps to address the Ombudsman's recommendations.
- 5 reports directed at 4 organizations recommended the payment of compensation. Of these, compensation had been paid in full in 3 instances, in another instance payment negotiations were ongoing, and in the final instance the supplier refused the compensation offered.
- 1 report included recommendations to both improve practices and pay compensation. The federal organization responded that changes had been made to its procurement practices and that, because of these changes, compensation was unwarranted; a view not shared by OPO.

This exercise demonstrated that federal organizations have taken steps to respond to the recommendations made by the Procurement Ombudsman to improve procurement practices. In the long run, such efforts may help reduce the recurrence of the most common procurement-related issues raised to OPO.

## Most common procurement-related issues

In addition to tracking the issues unearthed through reviews of complaints, the Office assesses all written complaints submitted by suppliers to determine whether there are any potential systemic issues related to fairness, openness and transparency.

The Office also analyzes all the questions, concerns and issues raised by Canadian suppliers through all contacts to the Office. This information is used by the Office to identify the most common issues raised, which are considered in determining what topics to examine through procurement practice reviews.

<sup>1</sup> Two federal organizations were each issued two separate review of complaint reports that included recommendations.

In 2016–2017, the top five most common issues, by category, raised by suppliers through direct contacts to the Office were:

<b>1</b> <b>Bid evaluation and selection plan</b>	<p><b>Concerns related to the method used by federal organizations to select the winning bid, including restrictive or unfair evaluation criteria. More specifically, suppliers raised concerns regarding:</b></p> <ol style="list-style-type: none"><li>1. awarding contracts to the lowest-priced technically compliant bid, given this does not always equate to federal organizations obtaining best value.</li><li>2. evaluation criteria, which:<ul style="list-style-type: none"><li>– appeared to favour certain suppliers over others, including the incumbent supplier.</li><li>– were different across solicitations and geographic locations, even if within the same federal organization, for the same work.</li><li>– required previous experience delivering goods or services to federal organizations, thus creating a barrier to new businesses trying to obtain federal contracts.</li></ul></li></ol>
<b>2</b> <b>Solicitation</b>	<p><b>Concerns in this category related to the solicitation phase of the procurement process, including issues such as:</b></p> <ul style="list-style-type: none"><li>– late or no responses to supplier questions during the solicitation phase.</li><li>– suppliers that qualify on standing offers or supply arrangements but are seemingly never contacted regarding potential opportunities.</li><li>– short time periods to respond to solicitations.</li></ul>
<b>3</b> <b>Evaluation of bid</b>	<p><b>Concerns regarding how bids were evaluated, including issues such as:</b></p> <ul style="list-style-type: none"><li>– suppliers disputing the grounds on which their bid was deemed non-compliant.</li><li>– contracts being awarded to a supplier whose bid should, allegedly, have been deemed non-compliant.</li><li>– concerns regarding the potential unequal application of evaluation criteria to competing bids.</li></ul>
<b>4</b> <b>Contract execution</b>	<p><b>Concerns related to how suppliers or federal officials were performing their respective contracting roles and responsibilities, including:</b></p> <ul style="list-style-type: none"><li>– federal officials delaying projects unnecessarily by not adhering to contractual timelines.</li><li>– federal officials terminating contracts without sufficient warning or justification.</li></ul> <p><b>Interestingly, this category is one where OPO heard from federal officials who contacted the Office directly to raise questions and concerns regarding suppliers: defaulting on contracts due to poor or under-performance, failing to complete the work stipulated in the contract or not meeting deadlines.</b></p>
<b>5</b> <b>Statement of work</b>	<p><b>Concerns focused on the quality and content of statements of work produced by federal organizations, more specifically regarding:</b></p> <ul style="list-style-type: none"><li>– documents that were unnecessarily specific or restrictive, giving the impression of wired specifications that favoured certain suppliers.</li><li>– documents that were insufficiently detailed or unclear, making it difficult for suppliers to respond effectively.</li></ul>

## Reviews of procurement practices

The Regulations provide the Procurement Ombudsman with the authority to review the procurement practices of federal organizations. These in-depth and objective reviews provide the Procurement Ombudsman with the opportunity to explore the procurement practices of one or more federal organizations, and make recommendations to strengthen the fairness, openness and transparency of those practices. The Office also shares information on good practices identified in federal organizations and in other jurisdictions as a way to promote improvement in the field of procurement.

To determine what topics to review, OPO considers all of the issues raised directly to the Office, including the most common procurement-related issues identified on the previous page. A detailed assessment is carried out of all the issues to identify those posing the greatest risks to the fairness, openness and transparency of the federal procurement system, and those that would be of the most common interest to suppliers and federal officials. In 2016–2017, the Office completed two procurement practice reviews that were directly related to high-risk areas identified in the 2015–2016 Annual Report: bid evaluation processes (evaluation of bids, which was the 2nd highest ranked issue category in 2015–2016) and non-competitive contracting (a sub-topic of procurement strategy, which was the 3rd highest ranked category).

The following section outlines what OPO did to review federal procurement practices, including the two reviews, one follow-up review and one study completed in 2016–2017. Full versions of the reviews and study are available on the Office’s website at [www.opo-boa.gc.ca](http://www.opo-boa.gc.ca).



## Bid evaluation processes

### What OPO did

OPO conducted a review to determine whether three federal organizations' bid evaluation processes were conducted in a manner consistent with applicable sections of the Treasury Board Contracting Policy, the *Financial Administration Act* and related regulations, and the principles of fairness, openness and transparency.

The Office examined Canada Border Services Agency (CBSA), Parks Canada (Parks) and the Royal Canadian Mounted Police (RCMP), assessing documents and files related to competitive contracts for goods and services up to \$2 million, from April 1, 2014 to November 30, 2015.

### What OPO found

OPO found that the three federal organizations had policies and guidelines in place to support bid evaluation processes. Roles and responsibilities were clear and communicated, and monitoring and quality assurance activities were noted.

The bid evaluation processes for the majority of the files reviewed were conducted in a manner consistent with applicable legislation and policies and supported the principles of fairness, openness and transparency.

Nonetheless, inconsistencies and areas for improvement were identified, including the need for organizations to strengthen file documentation.



### What the Ombudsman recommended

The Procurement Ombudsman made no recommendations to the RCMP as their management structure was solid and few errors were found in their files.

The Ombudsman recommended the CBSA complete the implementation of its contracting quality assurance program and the updating of policies, templates and guidance.

The Ombudsman recommended Parks strengthen its oversight of bid evaluation processes through the continued updating of procurement guidance, the development and implementation of formal quality assurance activities, and the establishment of an appropriate review mechanism, such as a contracting review board and a review of its contracting authority delegations.

CBSA and Parks committed to implementing the Procurement Ombudsman's recommendations.

### Non-competitive contracting

#### What OPO did

OPO reviewed the procurement practices of Agriculture and Agri-Food Canada (AAFC), Immigration, Refugees and Citizenship Canada (IRCC) and Statistics Canada (StatCan) to determine whether non-competitive contracts and associated amendments were issued in a manner consistent with applicable sections of the Treasury Board Contracting Policy, the *Financial Administration Act* and related regulations, and the principles of fairness, openness and transparency. Contracts examined were awarded between November 30, 2013 and November 30, 2015.



## What OPO found

StatCan and IRCC were able to demonstrate that nearly all non-competitive contracts and amendments to non-competitive contracts reviewed were awarded and issued according to the requirements of the Treasury Board Contracting Policy and therefore supported the principles of fairness and transparency. Of the 30 files reviewed at AAFC, 7 were not awarded in a manner consistent with the Treasury Board Contracting Policy.

## What the Ombudsman recommended

No recommendations were directed to IRCC and StatCan. As for AAFC, the Procurement Ombudsman recommended an increase in oversight of non-competitive contracts and associated amendments, particularly in the organization's regional offices, to ensure that procurement practices are consistent with the requirements of the Treasury Board Contracting Policy. In response to this recommendation, AAFC indicated it will review opportunities and augment its procurement oversight function for non-competitive procurement and associated amendments to ensure alignment with applicable requirements.

## Follow-up reviews

To determine the impact of OPO's procurement practice reviews on federal practices, follow-up reviews are conducted two to three years after the release of a report. Follow-up reviews allow the Office to report on progress made by federal organizations in responding to the Procurement Ombudsman's recommendations. These reviews inform interested stakeholders of specific actions organizations have taken to improve procurement practices, thereby facilitating other federal organizations' ability to introduce similar improvements, where applicable. In addition, the information on the nature and extent of responses to the recommendations provides an indication of the usefulness of OPO's reviews in promoting fairness, openness and transparency in federal procurement.

## Follow-up report on the 2013–2014 procurement practice review

### What OPO did

After the initial 2013–2014 review of Health Canada, First Nations and Inuit Health Branch, Manitoba Region's procurement practices on acquiring dental services, OPO conducted a follow-up to assess whether the organization implemented the recommendations made by the Procurement Ombudsman. Specifically, the follow-up focused on what actions were undertaken in response to the initial review and the extent to which each action had been completed and monitored.

### What OPO found

The follow-up revealed the organization had implemented a series of measures to strengthen its management controls and procurement practices and had developed a new standing offer for dental services to be implemented by April 1, 2017. The follow-up review noted one recommendation made by the Procurement Ombudsman remained outstanding. This recommendation required seeking clarification on whether Treasury Board approval was necessary for certain procurement activities.

## Procurement studies

The Office conducts studies on procurement-related topics to ensure the procurement community has a balanced understanding of the interests and concerns of suppliers and federal officials. OPO's procurement studies provide the Office with an opportunity to share good procurement practices and encourage dialogue and critical thinking regarding Canadian federal procurement.



## Available procurement information study

### What OPO did

OPO examined publicly available procurement information to determine if gaps existed between the information available and the information required by government policies, guidelines and initiatives. This study also sought to determine if the information was useful, from both an OPO and supplier perspective, and if any additional information may be useful to suppliers and other interested stakeholders.

To gain international perspective, OPO explored open data initiatives and reporting methods in the United States and Australia.

### What OPO found

Overall, the reporting methods explored met the Canadian government's policy requirements and initiatives by providing historical information about federal procurement activities. While the disclosure of procurement information may have been consistent with policies and guidelines in place, publicly available information was limited in terms of usefulness.

For those interested in federal procurement, the information was fragmented, not timely and inconsistent. For suppliers, it was difficult to determine whether a federal market existed for their product, what federal organizations spent annually on given goods or services and what the upcoming business opportunities were.

### What OPO concluded

OPO supports the Government's commitment to make available complete, timely and accessible information, as set out in the open data principles. Centralized access to federal government procurement data and information should provide the public with greater insight into government activities and the use of tax dollars.

While a step in the right direction, the centralization of information does not address the lack of transparency regarding contracts valued at less than \$10,000, which account for a significant portion of federal procurement activity.

# Appendix

## Statement of Operations for the Year Ended March 31, 2017

### Statement of Operations

EXPENSES	2016-2017
	(\$000)
Salaries and Employee Benefits	2,497
Professional Services	203
Operating Expenses	79
Information and Communication	98
Materials and Supplies	45
Corporate Services provided by PWGSC (See Note 3)	360
<b>TOTAL</b>	<b>3,282</b>

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, 2017

#### 1. Authority and objective

The position of Procurement Ombudsman was established through amendments to the *Department of Public Works and Government Services Act*. The Procurement Ombudsman's mandate is further defined in the *Procurement Ombudsman Regulations*. The Office of the Procurement Ombudsman's mission is to promote fairness, openness and transparency in federal procurement.

#### 2. Parliamentary authority

The funding approved by the Treasury Board for the operation of the Office of the Procurement Ombudsman is part of the Department of Public Works and Government Services<sup>2</sup> (DPWGS) appropriation, and consequently, the Office is subject to its legislative, regulatory and policy frameworks. Nonetheless, implicit in the nature and purpose of the Office is the need for OPO to fulfill its mandate in an independent fashion and to be seen to do so by maintaining an arm's-length relationship from the DPWGS.

#### 3. Related party transactions

CORPORATE SERVICES PROVIDED BY THE DPWGS	(\$000)
Finance	94
Human Resources	66
Information Technology	192
Other	8
<b>TOTAL</b>	<b>360</b>

<sup>2</sup> The Department of Public Works and Government Services (DPWGS), or Public Works and Government Services Canada, is now referred to as Public Services and Procurement Canada (PSPC).