

PROMOTING FAIRNESS, OPENNESS & TRANSPARENCY IN FEDERAL PROCUREMENT

# OFFICE OF THE PROCUREMENT OMBUDSMAN

Annual Report

2018-2019



Government  
of Canada

Gouvernement  
du Canada

Canada 

## **OFFICE OF THE PROCUREMENT OMBUDSMAN**

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# Our mission, mandate and values

## Our mission

To promote fairness, openness and transparency in federal procurement.

## Our mandate

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

- Review the practices of federal departments for acquiring goods and services to assess their fairness, openness and transparency and make any appropriate recommendations to the relevant department.
- Review any complaint respecting the award of a contract for the acquisition of goods below the value of \$25,300 and services below the value of \$101,100 where the criteria of the Canadian Free Trade Agreement would otherwise apply.
- Review any complaint respecting the administration of a contract for the acquisition of goods or services by a department, regardless of dollar value.
- Ensure that an alternative dispute resolution process is provided, if the parties to the contract agree to participate.

## Our values

Employees of the Office of the Procurement Ombudsman (OPO) are guided by the values of impartiality, transparency and respect.

# Letter to the Minister of Public Services and Procurement and Accessibility

Dear Minister,

Pursuant to paragraph 22.3(1) of the *Department of Public Works and Government Services Act*, it is an honour to submit the Procurement Ombudsman's Annual Report for the period of April 1, 2018 to March 31, 2019 (fiscal year 2018–19).

Yours sincerely,

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

Alexander Jeglic

Procurement Ombudsman  
Ottawa, July 31, 2019

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## Message from the Procurement Ombudsman

One of the most exciting changes that marked the first year of my mandate is the evolving role of the Office. While our focus remains on our core legislative activities, we are taking every opportunity to bring the right people together to develop long-term solutions to procurement issues. I firmly believe that by becoming agents of change, we will make a valuable and lasting impact on federal procurement.

This year, we also changed how we gather, record and use information about the procurement issues that suppliers and federal officials face. We implemented a new case management system to provide better business intelligence. One of the most significant ways we used this information was to develop our five-year Procurement Practice Review Plan which focuses on the issues we hear about most. These issues link to elements of the:

- pre-contracting phase (e.g. procurement strategy, statement of work, evaluation plans);
- contracting phase (e.g. solicitation documents, evaluation of bids, debriefing); and
- contract administration phase (e.g. performance, amendments, payments).

### Update on priorities

At the beginning of my mandate, my team and I established four priorities for the coming years: transparency, simplification, growth in dispute resolution services, and knowledge deepening and sharing. I am pleased to report that we have made solid progress in each of these areas over the past year.

#### Transparency

We began publishing full “Review of Complaint” reports online for complaints received after September 1, 2018. This provides more exposure to the extensive analysis we undertake in our reviews. It also acts on my belief that sharing information with all stakeholders will ensure we all learn valuable lessons.

#### Simplification

We regularly hear from Canadian businesses and federal officials who believe the contracting process is unnecessarily complex. My office is taking steps to address this concern. During the past year, we:

- advised federal departments on how they could simplify their procurement processes (e.g. identifying unnecessary administrative burdens placed on bidders); and
- made suggestions supporting simplification during our consultations with decision-makers on key initiatives such as the government-wide procurement directive, the vendor performance management regime and the procurement management framework.

## Growth in dispute resolution services

We worked diligently to help resolve contract disputes between suppliers and federal departments in the most simple and straightforward way possible. This will become easier as more federal departments include clauses in their contracts that provide advanced consent to participate in the Office of the Procurement Ombudsman's (OPO) Alternative Dispute Resolution (ADR) process. Over the last year, we also increased the number of certified mediators on staff to handle the expected growth in demand for these services in coming years.

## Knowledge deepening and sharing

In 2018-19, my office launched the knowledge deepening and sharing (KDS) initiative to better understand the root causes of recurring issues in federal procurement. We plan to publish a series of studies to leverage our knowledge of federal procurement practices to provide useful information to federal procurement stakeholders. In fact, we will publish our first two products in the coming year on:

- low dollar value contracting; and
- dispute resolution mechanisms in vendor performance management.

## Looking ahead

After one year in the role of Procurement Ombudsman, I am proud of the progress my office has made in priority areas. I also see areas where regulatory changes should be made to make my office more effective. Former Procurement Ombudsman Frank Brunetta put forward some of these required changes in his End of Mandate Report. These improvements include:

- giving the Ombudsman the authority to compel departments to produce records subject to a review; and
- increasing the maximum amount of compensation the Ombudsman can recommend from the current amount of 10% of the value of the contract.

As I enter my second year as the Procurement Ombudsman, I will continue to explore ways my office can do a better job of connecting stakeholders, resolving issues, and promoting fairness, openness and transparency in federal procurement. One thing that will never change is our commitment to serve Canadian businesses and federal organizations, so if you are encountering any issues related to federal procurement, please contact me.

Sincerely,



Alexander Jeglic



# OUR PRIORITIES



Transparency



Simplification



Growth in Dispute Resolution Services



Knowledge Deepening and Sharing

**“Congratulations on a very successful inaugural summit. The Diversifying the Federal Supply Chain Summit was a great first step for the Government of Canada. The bringing together of the diverse suppliers, the government departments/agencies, the certification associations and other key stakeholders for the purposes of awareness, education and networking was integral to the creation of a successful strategy.”**

**— Canadian Aboriginal and Minority  
Supplier Council**

# 2018-19 Highlights

## Diversifying the federal supply chain

In March 2019, OPO hosted its first Diversifying the Federal Supply Chain Summit (the Summit). This event attracted over 165 participants from Ottawa and beyond. It connected underrepresented Canadian business owners with representatives from government programs and private sector organizations who can help them understand the federal procurement process.

Through the simple act of bringing the right people together, OPO gave these businesses – owned and led by women, Indigenous Peoples, persons with disabilities, members of the LGBTQ2+ community and minorities – a unique opportunity to engage directly with people who can support them and increase their capacity to participate in the process.

The event also provided a forum for businesses to:

- share their experiences bidding on federal contracts; and
- express their needs and concerns to the people who are in a position to take action.

Like many other Canadian suppliers, these businesses are trying to introduce their goods and services into the federal supply chain. The better equipped they are, the greater their chances of success. During one of the sessions, a supplier raised an issue about meeting a mandatory requirement on a construction contract. After hearing the issue, two other participants offered to help the supplier overcome this particular obstacle. This simple exchange of information put a spotlight on the value of bringing people together.

While OPO recognizes that one event cannot change the system, the Summit is a step in the right direction towards an inclusive federal supply chain. Given the positive feedback from participants, OPO is in the process of planning a follow-up summit.



Diversifying the Federal Supply Chain Summit

**“The Office of the Procurement Ombudsman is a valued partner on the Treasury Board Secretariat’s procurement modernization recruitment initiative, the Roadmap for Partnership with Universities and Colleges. Thanks to the participation of the Office of the Procurement Ombudsman on our recruitment initiative, we will be able to entice more talent to the federal procurement workforce.”**

— Treasury Board Secretariat

## Strengthening the federal procurement community

The Government of Canada has identified a capacity gap in the federal procurement community. The well-established transactional role of procurement is evolving, and procurement professionals will soon be expected to adopt a more strategic approach that focuses on long-term considerations that ensure the best value for Canadians. This shift in strategy requires procurement professionals to possess a particular set of competencies.

Along with ongoing efforts to train procurement professionals, the Treasury Board Secretariat has started to partner with universities and colleges across Canada to promote career opportunities in federal procurement.

OPO was invited to participate in this initiative and met with students at seven post-secondary institutions to promote career opportunities in federal procurement.

Positive feedback from students and school administrators has convinced OPO that supporting this government-wide initiative is very worthwhile. This is especially true in cities outside the National Capital Region, where working in the federal public service may not be an obvious choice. In the year ahead, OPO looks forward to continuing to meet with students across Canada to promote the opportunities that exist for them in federal procurement.

## Building awareness of OPO services

OPO provides an independent avenue for:

- Canadian suppliers to raise complaints about the award or administration of certain federal contracts; and
- either Canadian suppliers or federal departments to request neutral and impartial dispute resolution services when a contract dispute arises.

One of the most effective ways to build awareness of OPO's services is to include language detailing these services directly in procurement documents.

This is why, in 2018-19, the Procurement Ombudsman wrote to Deputy Heads of 83 federal departments, asking them to include three clauses about OPO's service offerings in their procurement documentation. They are:

- 1 A new clause in solicitation documents (e.g. requests for proposals) and regret letters to inform Canadian bidders that OPO provides an independent avenue to raise complaints about the award of federal contracts under \$25,300 for goods and \$101,100 for services.
- 2 A new dispute resolution clause in contracts providing the parties' advanced consent to participate in OPO-led mediation, should a dispute arise regarding the interpretation or application of the contract's terms and conditions.
- 3 A new contract administration clause in contracts stating the parties' understanding that OPO will review complaints about the administration of the contract if certain requirements of the *Department of Public Works and Government Services Act* and the *Procurement Ombudsman Regulations* are met.

The Ombudsman received tremendous support from Deputy Heads on this initiative. At the time of printing, 72 of the 83 (87%) federal departments contacted have responded, and 99% of those have agreed to include one, two or all three of the clauses in their procurement documents. OPO is pleased that departments support increased transparency in federal procurement by clearly and directly informing Canadian businesses about OPO's services.

**“ Very happy with this meeting and the information received. Your organization is a valuable support for companies like ours. Long life to OPO!” [Translation]**

**— Canadian Supplier**

# Outreach

One of OPO's key activities is engaging directly with Canadian businesses and federal departments.

In 2018-19, OPO participated in over 75 events across the country, including:

- meetings with suppliers and federal procurement officials;
- presentations at procurement conferences;
- participation at trade shows;
- information sharing sessions with Members of Parliament; and
- meetings with aspiring procurement specialists through our work with the Treasury Board Secretariat.



**1,089**  
suppliers  
registered

at OPO's 23 in  
person and on-line  
information sessions

**12**

presentations



delivered at procurement  
events and conferences

**14**

information  
sharing sessions



with federal departments

**7**

universities  
visited



**17**

kiosks  
at trade shows



**56,754**  
page views on OPO's website

**88,170**

Twitter impressions





# What we heard

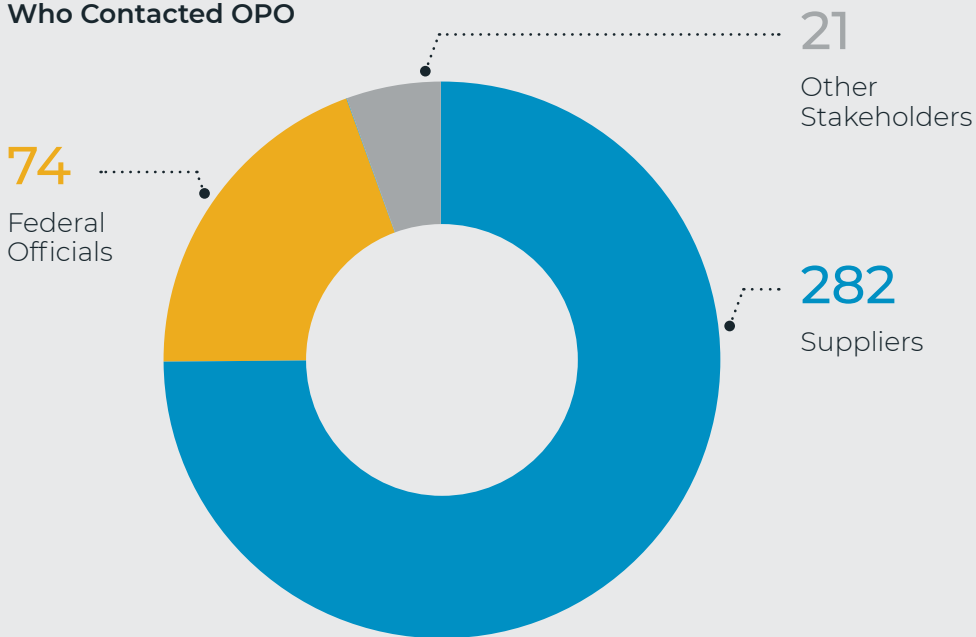
In 2018-19, OPO received a total of 377 procurement-related contacts. Each “contact” refers to a time an individual contacted the Office directly or spoke with an OPO employee at an outreach event. Contacts come from a variety of stakeholders in the federal procurement environment.

The two main stakeholder groups are:

- Canadian businesses (suppliers) who sell, or hope to sell, goods and services to federal departments; and
- federal officials involved in buying goods and services (e.g. procurement officers, program managers and senior management).

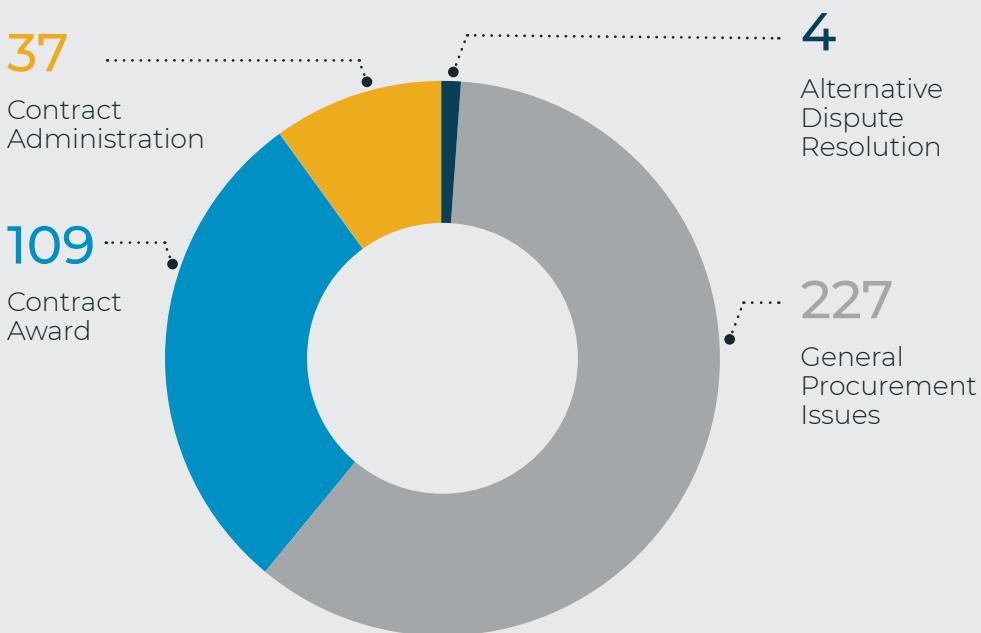
## Summary of contacts received in 2018-19

### Who Contacted OPO



Of the 377 total contacts, 282 contacts (75%) came from suppliers, 74 (20%) came from federal government officials and 21 (5%) came from other stakeholders.

### Nature of Contacts



Of the 377 total contacts, 150 contacts (40%) related to the award or administration of a specific contract, including requests for Alternative Dispute Resolution services.

227 contacts (60%) came from stakeholders with more general questions or concerns about one or several aspects of federal procurement.

## Top issues – what stakeholders told us

OPO analyzes all contacts received to identify recurring issues that affect fairness, openness and transparency in federal procurement. This information is used to identify the most common issues and inform discussions with federal officials.

OPO also considers issues raised through contacts when determining topics to examine through procurement practice reviews. Wherever possible, OPO links these issues to one of three phases in the procurement process.

### Phases of the procurement process

<b>Pre-contracting</b> includes activities related to procurement planning up to issuance of a bid solicitation.	<b>Contracting</b> includes activities from issuance of a bid solicitation to contract award and debriefing unsuccessful bidders.	<b>Contract Administration</b> includes activities after contract award such as paying suppliers and amendments to existing contracts.
<b>35%</b> <sup>1</sup> of issues are linked to the pre-contracting phase. Most relate to the procurement strategy (e.g. bundling contracts or use of non-competitive processes), statement of work, or evaluation plan.	<b>45%</b> <sup>1</sup> of issues are linked to the contracting phase. These issues often relate to bid evaluations and the selection of successful bidders, communications between federal departments and suppliers, and debrief meetings for unsuccessful bidders.	<b>20%</b> <sup>1</sup> of issues are linked to the contract administration phase. These often relate to contract performance. OPO also routinely hears from suppliers with problems getting paid for work performed under a contract.

<sup>1</sup>Excluding issues associated with the overall procurement process.

## Top 10 issues

Below is a list of the top 10 issues stakeholders brought to OPO's attention in 2018-19.

The number in parenthesis represents the number of times the issue was raised. Each issue includes an example of what OPO actually heard from stakeholders.

Rank	Phase	Issues and Quotes from Stakeholders
1	Contracting Phase	The supplier received no response or inadequate response(s) to their questions. (33)  "I wrote to the contracting officer who replied by email, 'We will be in touch.' They weren't."
2	Pre-contracting Phase	The stakeholder felt the statement of work or evaluation criteria was unfair or biased. (28)  "The request for proposals had very specific experience requirements that favoured the current service provider."

Rank	Phase	Issues and Quotes from Stakeholders
3	Contracting Phase	The stakeholder felt the contracting organization was inconsistent or subjective in applying criteria during bid evaluations. (25)  "We have sought to gain clarity around what metrics or evaluation criteria may or may not have been used to understand which 'subjective' criteria may or may not apply."
4	Contracting Phase	The stakeholder believed a contract was awarded to the wrong bidder. (23)  "We received a regret letter with the winning price considerably above ours. As our bid should have scored 100% on the rated criteria the results appear to be problematic."
5	Contracting Phase	The stakeholder reported the federal organization did not provide a debriefing, or provided a debriefing with insufficient information or explanations. (22)  "We had a debrief call with the technical authorities; however, they informed us that they could not discuss information in the successful supplier's bid. They suggested that we contact OPO next."
6	Contract Administration Phase	The stakeholder felt the federal organization did not do its due diligence in the administration of a contract. (13)  "It is apparent that there has been a discrepancy on behalf of the Department within the contract management group. There is a misperception that the supplier is providing a commodity under contract when in actuality they are not providing anything."
7	Contract Administration Phase	The stakeholder reported deviations from contract terms and conditions associated with the performance of work. (13)  "It was brought to my attention that a contract was not completed in the timelines specified as per the contract requirements. It was also indicated the company who was awarded the contract knew they could not complete the requirements in the timeline specified contractually, and that the Department was aware of this fact and may have been complicit in the contract award under the non-compliant circumstances."
8	Contract Administration Phase	The stakeholder reported late payment for work performed under a contract. (12)  "I am writing to you in regards to outstanding invoices related to work performed for which we have still not been paid. I have received multiple emails saying the process takes time. I understand that but it shouldn't take over 1 year!"
9	Pre-contracting Phase	The stakeholder questioned solicitation processes that limit competition. (10)  "I understand there have been some requests sent to other companies and I did not receive a request for a bid. I am wondering what I can do to increase activity in this area?"
10	Pre-contracting Phase	The stakeholder objected to overly restrictive evaluation criteria. (9)  "Most of the time, requests for proposals I have been reviewing contain a mandatory requirement that one must have recent government experience. If one is on the outside of government, but has business experience that could benefit some government departments, how does one overcome this mandatory requirement?"

**“My office has done a great job in resolving issues without having to resort to a formal dispute resolution process. This is something I intend to continue to promote and track as it aligns with the principles of simplicity and helpfulness that my office stands for.”**

**— Procurement Ombudsman  
Alexander Jeglic**

# How we helped

## Informal resolution of issues

OPO works to help resolve issues raised by suppliers and federal officials as quickly and informally as possible.

In 2018-19, OPO continued to do much of its best work in an informal way by:

- connecting suppliers and federal departments;
- informing suppliers about potential options;
- offering support and influence; and
- answering procurement-related questions.

## Connecting suppliers and federal departments

OPO employees use their knowledge of the federal procurement process to help resolve stakeholders' issues. In 2018-19, OPO received 44 contacts where it connected suppliers and federal officials to find solutions to the issues they faced. For example, suppliers contact OPO when they are having difficulty getting paid for work performed. In these cases, OPO contacts the department to find out what is causing the delay, offer assistance to remove any impediments to payment and ultimately, help the supplier get paid.

OPO employees have the ability to recognize when to take a more active role in resolving a problem and when to connect the right people, allowing them to resolve the situation themselves. Regardless of the approach taken, OPO remains involved until the issue is resolved.

## Informing suppliers about potential options

OPO is not the only procurement review authority in Canada. Complaints about designated contracts above OPO's dollar thresholds (i.e. \$25,300 for goods and \$101,100 for services) may be within the jurisdiction of the Canadian International Trade Tribunal (the Tribunal).

In response to 32 of the contacts received in 2018-19, OPO suggested to a supplier they may wish to contact the Tribunal because their complaint was outside OPO's mandate. In 24 of these instances, the complaint was about the award of a contract with a value above OPO's dollar thresholds. In 5 instances, OPO suggested the supplier may wish to contact the Tribunal because the complaint was about the establishment of a federal government standing offer, which OPO cannot review.

## Offering support and influence

OPO works with suppliers and federal departments to clarify and address procurement issues. Occasionally, this will involve OPO employees playing a supportive role, using the Procurement Ombudsman's influence to help stakeholders reach a resolution. For example, in September 2018, a supplier contacted OPO seeking advice on an issue with a federal contract. The department invited the supplier to meet, and included OPO as a third-party observer. With OPO in attendance, the supplier and departmental officials had a constructive meeting, discussing many of the outstanding issues. Following the meeting, the supplier wrote to OPO to say "thank you for the time you took to attend the meeting. And not just your time, but for your support which to me made all the difference."

**“I have received the outstanding payment of \$4,200. I express my deep gratitude for all that you did to bring this to resolution. Your tenacity and professionalism are to be commended and admired.”**

**— Canadian Supplier**

## Answering procurement-related questions

The remaining contacts OPO received were from stakeholders with a wide variety of procurement-related questions or concerns.

For example, OPO received a number of questions and concerns about the Build in Canada Innovation Program (BCIP). Generally, these fall outside of the Procurement Ombudsman's jurisdiction, which is limited to reviewing complaints about the award or administration of federal "contracts." The BCIP issues were about funding arrangements, which are not considered "contracts" for the purposes of the *Procurement Ombudsman Regulations*. Although OPO was not able to formally review the BCIP-related complaints, the Office still responded to supplier questions and pointed them in the right direction. For instance, a supplier contacted OPO about the evaluation of their BCIP proposal. While the Procurement Ombudsman could not launch a formal review, OPO did speak with the supplier to better understand their concerns. Although the supplier chose not to pursue the matter further, OPO plans to work with the administrators of the BCIP to make clear to suppliers what recourse mechanisms are available to them as part of the program.

## General contacts

Many suppliers who contact OPO do not have an issue with a specific contract. They have questions or concerns about one or more aspects of federal procurement. Some are suppliers who are already doing work with the federal government. Others are suppliers who want to sell to the federal government. Because these issues are not linked to a particular contract, OPO cannot launch a formal review of complaint or offer ADR services. However, OPO does work to answer each question or concern that comes to the Office's attention.

In 2018-19, OPO received 227 general procurement-related contacts. One of the most common questions from suppliers, or potential suppliers, was how to do business with the federal government. These contacts include asking how:

- the government buys goods and services;
- to access procurement opportunities; and
- to prepare to sell to the federal government.

OPO employees often refer these inquiries to the Office of Small and Medium Enterprises (OSME). OSME is an organization within Public Services and Procurement Canada that advocates on behalf of small and medium enterprises and encourages their participation in federal procurement.

OPO and OSME are separate organizations that both work to improve federal government procurement, especially for small and medium enterprises. Many of the suppliers with questions for OPO also have questions for OSME, and vice versa. OPO staff made presentations at nine OSME events in 2018-19, and as a result, were able to connect with even more Canadian suppliers who can potentially benefit from OPO's services.

## Examples of how OPO helped – Human stories

### ■ Raising issues

In June 2018, OPO received a written complaint from a supplier about a specific type of office chair being removed from a federal government supply arrangement. The supplier stated they had supplied the government with this type of chair for 19 years, and it was the most popular chair the federal government purchased. The supplier could not understand why the technical specifications had changed and the chair was removed from the list.

As the complaint did not relate to a specific contract, the Procurement Ombudsman could not launch a formal review. However, OPO did help informally by:

- advising the department of the supplier's concerns;
- providing an explanation to the supplier about why the chair was removed; and
- helping the supplier communicate additional technical information about the chair to the department.

In the end, the department decided to re-evaluate its decision to remove the chair in question from the supply arrangement.

### ■ Helping suppliers get paid

Receiving timely payment for work completed is crucial for suppliers, especially for small and medium enterprises. In March 2019, a supplier contacted OPO because they had not been paid for shredders delivered to a federal department. The invoice had been outstanding for nearly 90 days. Despite repeated efforts, the supplier had not been able to resolve the issue on their own. They contacted OPO seeking help. OPO contacted the department, and the very next day the supplier received payment in full for their outstanding invoice.

**“When Canadian businesses and federal departments get bogged down in lengthy disputes, nobody benefits, least of all the taxpayer. The co-operative nature of dispute resolution services provides faster results and more flexibility to both parties. My office’s ADR services represent an effective tool to get contracts back on track, goods and services delivered, and suppliers paid.”**

— Procurement Ombudsman Alexander Jeglic to the Standing Committee on Government Operations and Estimates



## ■ Debriefing arranged

Debriefing is the process where suppliers receive information about the evaluation of their unsuccessful bids. The *Treasury Board Contracting Policy* states that debriefings should be provided to unsuccessful bidders on request. However, from time to time, OPO hears from suppliers who are having difficulty obtaining a debriefing from a contracting department.

In September 2018, a supplier contacted OPO about a federal department's failure to provide a debriefing. The supplier had unsuccessfully bid on a federal contract and requested a debriefing after they learned the contract had been awarded to another company. They did not hear back from the department. The supplier was unsure if OPO could help because more than a month had passed since they last contacted the department, but still wanted a debriefing to improve future proposals. OPO reached out to the department, explained the situation, and within a few days the department arranged a debriefing with the supplier.

## ■ Kick-starting mediation

In August 2018, a supplier in a dispute with a federal department about a construction contract contacted OPO. The supplier and the department had been in discussion about entering mediation for nearly three months and the supplier was growing weary over the lack of progress. OPO contacted the department to find out what was causing the delay. The departmental official indicated they wanted a quick resolution and offered a few options to get things moving. OPO communicated this message back to the supplier and continued to follow-up with the supplier on the status of the mediation. OPO was pleased to learn that the parties had reached a settlement on all outstanding issues. The supplier thanked OPO for its involvement, adding, "we believe the involvement from your office was instrumental in bringing [the department] back to the table."

## ■ Quick response to supplier questions

In December 2018, a supplier called OPO after receiving a regret letter indicating they had not been the successful candidate in a procurement process. The supplier wanted to know if a contract had been issued, because the regret letter did not mention this. OPO contacted the department and found out it had not issued a contract because it had not received any compliant bids. The departmental official informed OPO they were planning on re-tendering the requirement on Buyandsell.gc.ca, the government's electronic tendering system. The following day, OPO contacted the supplier to inform them no contract had been issued and recommended they continue to monitor the Buyandsell.gc.ca website for this opportunity to be re-tendered.

## Formal resolution of issues

Although the informal approach has proven most beneficial to OPO's stakeholders, OPO can undertake formal processes when issues between suppliers and federal departments cannot be resolved informally.

### Alternative dispute resolution

Suppliers and federal officials can seek OPO's assistance to help resolve their contractual disputes. OPO has a legislative mandate to provide Alternative Dispute Resolution (ADR) services relating to the interpretation or application of the terms and conditions of a federal contract regardless of dollar value. OPO's low-cost ADR services offer an opportunity for disputing parties to come together in a neutral setting and participate in a confidential and constructive dialogue. These services are a quick and inexpensive alternative to litigation. OPO's certified mediators guide participants through the process and encourage them to reach a mutually agreeable resolution. While OPO covers the cost of mediators and facilities, participating parties are responsible for their own costs such as travel to the ADR session.

During his appearance before the House of Commons Standing Committee on Government Operations and Estimates (known as OGGO) on April 17, 2018, the Procurement Ombudsman highlighted the growth of ADR services as one of his four priorities. OPO has launched several initiatives to promote and increase the use of its ADR services, including training more OPO staff as mediators, and requesting the inclusion of "advanced consent" ADR clauses in federal contracts. By decreasing barriers to participation and communicating the benefits of the service, OPO expects an increase in the number of ADR requests in the next four years.

In 2018-19, OPO received four requests for ADR services. Two of the requests met the requirements set out in the *Procurement Ombudsman Regulations*, and qualified for the formal ADR process.

- In one case, both parties agreed to use OPO's ADR process. At year-end, it remained in progress and continued into the 2019-20 fiscal year.
- In the other case, the supplier and department were able to resolve the dispute before the start of the ADR process.

### Complaints about the award of a contract

OPO assesses all formal complaints from suppliers about the award of contracts for goods and services against criteria set out in the *Procurement Ombudsman Regulations*. These criteria include,

**“I just would like to thank you and your team for the level of professionalism and effort which you undertook in conducting the review of our complaint and the procurement process involved in the award. The work was thorough, fair and comprehensive! Your balanced approach was welcomed.”**

**— Canadian supplier**

for example, that the complaint must be submitted in writing, by a Canadian company and within a set timeframe. The Procurement Ombudsman *must* launch a review when a complaint meets all the prescribed criteria. Based on the results of the review, the Ombudsman may recommend payment of compensation up to a maximum of 10% of the value of the contract awarded.

In 2018-19, two complaints were filed in accordance with the *Procurement Ombudsman Regulations* and met all prescribed criteria. As a result, both were launched as formal reviews, and were completed in 2018-19. The Office also completed two reviews in 2018-19 that began near the end of the previous fiscal year, for a total of four reviews in 2018-19.

### Below are summaries of the four formal reviews completed in 2018-19:

#### Competitive procurement rules

In June 2018, the Procurement Ombudsman completed the review of a complaint OPO received from a supplier about a contract awarded by a federal department. The contract was for training services related to the re-certification of enforcement officers. The Ombudsman found the department had breached competitive procurement rules by not treating all bidders equally and by failing to communicate the evaluation criteria and selection methodology. Since these breaches prevented the supplier from submitting a competitive proposal, the Ombudsman recommended the department pay the supplier compensation equal to 10% of the value of the contract.

#### Undisclosed criterion and a flawed evaluation formula

In June 2018, the Procurement Ombudsman completed the review of a complaint OPO received from a supplier about a contract awarded by a federal department. The contract was for an assessment of leading Canadian food and beverage exporters' plans to grow offshore exports. The Ombudsman found the department

used undisclosed criteria when evaluating the supplier's proposal, applied a weighting scheme that had not been communicated to potential bidders, and disregarded an amendment to the solicitation document about the formula to be used in calculating points. Since the department's actions did not meet the requirement to treat bidders fairly and in accordance with stated criteria, the Ombudsman recommended the department pay the supplier compensation equal to 10% of the value of the contract.

#### The necessity of meeting mandatory criteria

In December 2018, the Procurement Ombudsman completed the review of a complaint OPO received from a supplier about a contract awarded by a federal department. The contract was for photography services. The Ombudsman found the contract was awarded to a non-responsive bidder who failed to meet all of the mandatory criteria in the solicitation. As the supplier who complained to OPO was the only supplier to submit a responsive bid, the Ombudsman recommended the department pay the supplier compensation equal to 10% of the value of the contract awarded.

#### Improper application of bid evaluation criteria \*

In April 2019, the Procurement Ombudsman completed the review of a complaint it received from a supplier about a contract awarded by Correctional Service of Canada. The contract was for providing business process consultant services. The Procurement Ombudsman found the department erred in scoring the supplier's proposal. As the supplier should have been recommended for contract award as the lowest priced responsive bidder, the Ombudsman recommended the department pay the supplier compensation equal to 10% of the value of the contract. (To read the full report, visit OPO's website.)

**\* In line with the Procurement Ombudsman's commitment to enhance transparency, OPO began publishing all "Review of Complaint" reports in full on its website. This change came into effect for complaints received after September 1, 2018. The report completed April 2019 was the first to be published in full.**

## Complaints about the administration of a contract

OPO can review all complaints about the administration of a contract regardless of dollar amount, provided the complaint meets the criteria set out in the *Procurement Ombudsman Regulations*. Whenever a complaint meets the prescribed criteria, the Procurement Ombudsman must launch a review within 10 working days of the complaint being filed. During the 10-day period and with the complainant's written permission, the Office will:

- contact the relevant department to communicate the supplier's concern and seek the federal organization's perspective;
- attempt to facilitate a resolution; and
- if the facilitation process is unsuccessful, initiate a formal review.

In 2018-19, OPO did not launch any reviews of complaint about the administration of a contract. This is consistent with previous years. Written complaints about the administration of a contract rarely become the subject of a review. This is because for a complaint to be formally reviewed, the terms and conditions of the contract cannot be in dispute. Typically, the terms and conditions are in dispute. In those cases, OPO can usually assist by offering ADR services.

## Procurement practice reviews

OPO reviews the procurement practices of federal departments for the acquisition of goods and services to assess their fairness, openness and transparency. Procurement practice reviews provide OPO the opportunity to both acknowledge and share good practices, as well as to identify areas for improvement. Where appropriate, the Procurement Ombudsman will make recommendations to the relevant department to improve their procurement practices.

In October 2018, the Procurement Ombudsman approved a five-year plan for undertaking procurement practice reviews. This approach involves a standardized review program that will assess the highest procurement risk elements

across the 20 largest federal departments with annual procurement of \$100 million or more. Each year, OPO will select departments based on their annual procurement activity and the amount of time that has passed since their procurement activities were last audited, or subject to a review by OPO.

In 2018-19, OPO completed two procurement practice reviews launched the previous year and started two others. Below are summaries of the two completed reviews.

### Review of bid solicitation processes (Elections Canada)

The objective of this review was to determine whether departmental practices for requesting information from and providing information to potential bidders during the solicitation period were consistent with legal and policy requirements, and supported the principles of fairness, openness and transparency.

The Procurement Ombudsman concluded that Elections Canada had a robust procurement and contracting framework that included the policies, practices, and operational tools to conduct fair and transparent procurement processes.

In the majority of files reviewed, the information included in the solicitation documents met requirements.

OPO found the department communicated with potential bidders in a fair and transparent manner, sharing all answers to potential bidders' questions simultaneously with other potential bidders to avoid unfair advantage.

In most of the files reviewed, bidding periods were clearly established for requirements above \$25,000. However, the Ombudsman noted several exceptions on requirements below \$25,000, which may have impacted the fairness of the solicitation process.

Although Elections Canada used most of the information it requested in solicitation documents during the evaluation process, it may have created an unnecessary administrative burden by requiring bidders to submit client references that were never verified. Nonetheless, the department did have guidance in place to mitigate the risk of using reference checks in an unfair manner.

The Ombudsman made two recommendations for Elections Canada's continued development and implementation of a robust procurement and contracting framework:

1. To ensure all solicitations meet requirements for establishing bidding periods.
2. To ensure evaluation criteria and selection methodology are included in solicitation documents.

Elections Canada agreed with the Ombudsman's recommendations and will act on them. (To read the full report, visit OPO's website.)

### **Review of the procurement management control framework of a federal organization (Courts Administration Service)**

The objective of this review was to determine whether the Courts Administration Service (CAS) had a procurement management control framework (MCF) in place, and whether it was consistent with legal and policy requirements, and supported the principles of fairness, openness and transparency.

The Procurement Ombudsman concluded that CAS had a procurement MCF in place which, for the most part, was functioning as intended and in a way that met applicable requirements. The Ombudsman also identified areas where CAS could strengthen its MCF to reduce potential risks to fairness, openness and transparency.

CAS's procurement MCF demonstrated a commitment to values and ethics and support for employees' participation in procurement-related training. While the department's Contract Review Committee provided a formal challenge function, there was a need to clarify committee processes and its members' responsibilities.

Procurement controls, as well as roles, responsibilities and accountabilities had been documented in draft form. Given the volume and complexity of CAS's procurement, the department would be well-served to formally approve and implement its draft procedures and guidelines.

CAS relied mainly on informal risk assessment processes that provided limited information on a proposed procurement's risk profile. Improved documentation of the procurement risk assessment process would better inform the selection of appropriate procurement strategies and support the Contract Review Committee's oversight role.

Although information about individual procurements was communicated within the department, OPO found information on the procurement function was lacking. For example, there was no departmental procurement plan and a number of contracts were not publicly disclosed as required.

The Ombudsman made several recommendations to strengthen CAS's procurement MCF, including the need to clarify roles and procedures, formalize guidance documents, document risk-related processes, and improve planning and monitoring activities. CAS agreed with the Ombudsman's recommendations and committed to implement them. (To read the full report, visit OPO's website.)

**In the procurement practice reviews summarized above, both Elections Canada and the Courts Administration Service agreed with the Ombudsman's recommendations and committed to act on them.**



# Supporting procurement policy development

The Treasury Board Secretariat recognizes that procurement processes conducted under the *Treasury Board Contracting Policy* are often complex and encourage risk averse behaviour on behalf of the buyer. As part of its Policy Suite Reset initiative, Treasury Board Secretariat is working with Public Services and Procurement Canada “to streamline and simplify policy instruments so that they are less administratively burdensome, and so that they better support broader economic, social and environmental goals.”

For its part, Public Services and Procurement Canada is working to develop a vendor performance management framework, which will include a new policy instrument. The vendor performance management framework is described as “a transformational enterprise-wide initiative that will fundamentally enhance the procurement ecosystem.” This initiative relates directly to commitments in the Minister of Public Services and Procurement and Accessibility’s mandate letter from the Prime Minister.

In 2018-19, OPO took an active role in supporting these organizations in their work to renew key procurement policy instruments and tools.

## **Draft Treasury Board Directive on the Management of Procurement**

The *Treasury Board Contracting Policy* is outdated and does not reflect the principles of modern comptrollership, and work is underway to replace it with a new directive. In 2018-19, OPO participated in several of the Treasury Board Secretariat’s intragovernmental consultations on the draft Directive on the Management of Procurement. Through this process, OPO identified references to the *Treasury Board Contracting Policy* in OPO’s past reports and assessed the impact the draft directive may have on OPO’s ability to connect the principles of fairness, openness and transparency to the actions of federal departments. OPO’s submission included detailed written questions and comments on the draft directive, which were discussed with representatives from the Treasury Board Secretariat including potential impacts of not reflecting certain sections of the *Treasury Board Contracting Policy* in the new directive.

## **Procurement management framework**

In connection with the Policy Suite Reset, in 2018-19 the Treasury Board Secretariat established a multi-departmental Chief Procurement Officer (CPO) Pilot Project. One of the key tasks of the CPO Pilot Project was to research existing procurement management frameworks with a view to recommending a standardized model. OPO was invited to CPO Pilot Project meetings as a subject matter expert. Over a number of months, OPO worked closely with CPO Pilot Project members to develop and refine a standardized procurement management framework. CPO Pilot Project members presented the procurement management framework to a government-wide CPO Council where it was unanimously approved.

## **Draft Public Services and Procurement Canada Vendor Performance Management Policy**

A common concern both suppliers and federal officials have raised to OPO over the years is the topic of vendor performance.

Suppliers complain about competitors who are known “poor performers”, yet continually receive federal contracts.

Federal officials complain about having to award contracts to known poor performers, as there is no mechanism in place to take past performance into account when evaluating bids and awarding contracts.

Over the past year, OPO has provided feedback and suggestions to Public Services and Procurement Canada regarding a policy and framework for monitoring vendor performance and taking it into account when awarding federal contracts. A vendor performance regime that rewards strong performers and penalizes poor performers aligns with OPO’s mission of promoting fairness, openness and transparency in federal procurement.





# Procurement research

In 2018-19, OPO launched the knowledge deepening and sharing (KDS) initiative to explore significant and recurring issues in federal procurement. OPO is leveraging its knowledge of federal procurement practices by publishing a series of studies that examine areas of concern raised by federal officials and the supplier community. The purpose of these publications is to provide useful information to federal procurement stakeholders. In 2019-20, OPO will publish two of these studies on the topics of low dollar value contracting and dispute resolution mechanisms in vendor performance management.

## Low dollar value contracting

This KDS study examines low dollar value contracting in federal departments and the cost of awarding such contracts, including the cost to suppliers. The risks associated with low dollar value contracting bear consideration as these contracts account for over 90% of all contracts federal

departments award, despite representing less than 10% of contract dollar value.

The study highlights key considerations and provides practical guidance federal departments can apply when deciding whether they should award low dollar value contracts through competitive or non-competitive means.

## Dispute resolution mechanisms in vendor performance management

This KDS study examines existing vendor performance management frameworks in Canada to determine the extent to which they include dispute resolution mechanisms and present alternative approaches. The results of this study may be of interest to procurement stakeholders at national, provincial/territorial or municipal government levels who are interested in establishing or revising their approach to dispute resolution within the context of a vendor performance management framework.





## Statement of operations for the year ended March 31, 2019

### 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 Treasury Board for the operation of the Office of the Procurement Ombudsman is part of Public Works and Government Services Canada's (PWGSC)<sup>1</sup> 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 the Office of the Procurement Ombudsman to fulfill its mandate in an independent fashion, and be seen to do so, by maintaining an arm's-length relationship with PWGSC.

### 3. Statement of operations

Expenses		2018-19 (\$000)
Salaries and employee benefits		2,787
Professional services		156
Operating expenses		67
Information and communication		108
Materials and supplies		15
Corporate services provided by Public Services and Procurement Canada <sup>2</sup>		1,240 <sup>3</sup>
Finance	83	
Human resources	69	
Information technology	484	
Office relocation	599	
Other	5	
<b>Total</b>		<b>4,373</b>

<sup>1</sup>The Department of Public Works and Government Services, or Public Works and Government Services Canada, is now referred to as Public Services and Procurement Canada.

<sup>2</sup>This partnership has allowed the Office of the Procurement Ombudsman to increase efficiency by leveraging Public Services and Procurement Canada's expertise in these areas, and to ensure adherence to necessary policies and procedures.

<sup>3</sup>Higher corporate costs are due to the relocation of the Office of the Procurement Ombudsman in November 2018 and the acquisition of a new case management system.

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