



# PROCUREMENT OMBUDSMAN'S ANNUAL REPORT 2021-2022

Evolving in Tandem

PROMOTING  
**FAIRNESS, OPENNESS  
AND TRANSPARENCY**  
IN FEDERAL PROCUREMENT



# Letter to 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 to submit the Procurement Ombudsman's Annual Report for the period of April 1, 2021 to March 31, 2022 (fiscal year 2021-22).

Yours sincerely,

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

Alexander Jeglic

Procurement Ombudsman  
Ottawa, July 2022

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# 1

# Office of the Procurement Ombudsman

## Our mission

We promote fairness, openness and transparency in federal procurement.

## Our mandate

The *Department of Public Works and Government Services Act* requires the Procurement Ombudsman to:

- **Review procurement practices:** 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 for the improvement of those practices
- **Review complaints related to contract award:** Review complaints respecting the award of a contract for the acquisition of goods below \$30,300 and services below \$121,200, where the criteria of the Canadian Free Trade Agreement would otherwise apply
- **Review complaints related to contract administration:** Review complaints respecting the administration of a contract for the acquisition of goods or services, regardless of dollar value

- **Provide alternative dispute resolution:**

Ensure that an alternative dispute resolution process is provided to parties to federal contracts, regardless of dollar value of the contract, if the parties agree to participate

## Who we are

The Office of the Procurement Ombudsman (OPO) is comprised of employees representing diverse backgrounds and cultures. In 2020–21, OPO committed to a 50/30 diversity goal, to achieve a 50% female and a 30% diverse workforce within 5 years. As of March 31, 2022, 1 year into the 5 year commitment, the results of a self-identification survey have shown that OPO has 74% female and 26% diverse workforce.

In 2020–21, OPO committed to a 50/30 diversity goal, to achieve a 50% female and a 30% diverse workforce within 5 years. As of March 31, 2022, 1 year into the 5 year commitment, the results of a self-identification survey have shown that OPO has a 74% female and 26% diverse workforce.

# 2

## Message from the Procurement Ombudsman

This past year we have witnessed several changes in the federal procurement landscape, including the long-awaited release of the new Treasury Board Directive on the Management of Procurement, the continued rollout of the new [CanadaBuys](#) e-procurement system, and the launch of Public Services and Procurement Canada's (PSPC) Policy on Social Procurement. These changes are expected to update the way the federal government purchases its goods and services in the coming years.

As the federal procurement landscape has evolved, so too has the role of my office and how we carry-out our mission to promote fairness, openness and transparency. In this year's annual report, I am proud to highlight some of the ways my office has been evolving to best serve our stakeholders.

**This report shares some observations on the state of federal procurement from our analysis of complaints, reviews of departmental procurement practices, interactions with stakeholders, and the research studies that my office has completed to date.**

### Procurement Ombudsman's priorities

#### 1 Growth in alternative dispute resolution

Over the last 4 years I have championed the benefits of mediation for its ability to find fast and effective solutions to contract disputes. At the beginning of my term as Ombud, I set out to grow my office's alternative dispute resolution practice, which has consisted of facilitation and mediation services.

I reached out to the heads of 83 departments in 2019 and again in 2021 to request that they include language about my office's mediation services in their procurement documents. The best way to let Canadian businesses know that Parliament intended OPO to provide quick and effective mediation services is to include language to this effect directly within federal government contracts. However, some of these departments have not yet done so. I will be writing to all departmental heads again in 2022-23 to request that they maximize transparency and directly

reference OPO's services within their solicitation documents, contracts and regret letters to Canadian businesses.

Although OPO-led mediations usually lead to successful resolutions of contract disputes, we have not seen an increase in the use of our services. This year my office received only 7 requests from suppliers for mediation. In 3 of these instances, the department declined OPO's invitation to participate in the mediation process.

It is frustrating to have departments refuse to try and resolve issues through mediation, as suppliers want to try to resolve their contract dispute outside of costly legal proceedings. Mediation provides parties with an opportunity to work through their issues with a neutral and impartial mediator, and find a mutually agreeable solution. I cannot emphasize enough the importance of coming to the mediation table and working to find a resolution before disputes escalate to litigation.

## 2 Simplification

My office regularly hears from both Canadian businesses and federal officials who believe the contracting process is unnecessarily complex. This is one of the reasons I have made simplification a priority throughout my term.

In OPO's procurement practice reviews, my office highlights examples of and opportunities for simplifying the federal procurement process. Examples of simplification include bundling similar

requirements, refraining from using unnecessary evaluation criteria, and replacing the reference check process with a more efficient process.

In my annual report last year, I highlighted that 52% of competitive solicitations we reviewed resulted in only 1 bid, as suppliers often decide that it is just not worth their while to go to the effort and expense of submitting a bid. This year, this number has fallen from 52% to a lower but still concerning 36%.

## 3 Transparency

This year my office was contacted by numerous stakeholders about the lack of transparency associated with the government's efforts to procure items related to the COVID-19 pandemic. OPO received several complaints from suppliers about their inability to gain information about the results of solicitation processes, and why their bid was unsuccessful.

In the early months of 2020, the Government of Canada took an unprecedented approach in applying a blanket National Security Exception (NSE) to all procurements supporting Canada's response to the COVID-19



In the majority of reviews conducted this year, we found that the failure to maintain appropriate records of key decisions impacted the transparency of the procurement process.

pandemic. To provide insight to our stakeholders on the national security exception, we drafted a Knowledge Deepening and Sharing (KDS) study on the topic, which will be published on [our website](#) along with other procurement-related research studies.

Issues with file documentation also remained a persistent observation in our reviews of departmental procurement practices in 2021–22. In the majority of reviews conducted this year, we found that the failure to maintain appropriate records of key decisions impacted the transparency of the procurement process. Even in the context of emergency procurement, it is of paramount importance to clearly document the steps taken and decisions made during the procurement process.

#### 4 Knowledge Deepening and Sharing

Since 2018–19, my office has undertaken independent research into procurement topics of interest to our stakeholders. This year we completed 2 Knowledge Deepening and Sharing (KDS) studies.

The first study builds on our previous examination of social procurement and explores more deeply the topic of set-aside programs. The report examined case studies from within Canada and abroad including established programs in Australia and Europe. This study offers a critical examination of different approaches to set-aside programs. It identifies several themes, including the need to overcome the criticism

of reduced competition, the importance of establishing realistic targets, monitoring progress, and collecting meaningful data.

Our second study explores the construct and application of the National Security Exception (NSE) and its impact on government procurement through the lens of fairness, openness and transparency. This study demonstrates how the overly broad application of the NSE can result in a lack of transparency. The NSE insulates procurements from traditional accountability mechanisms that would both scrutinize the application of the NSE and provide a recourse for suppliers through the Canadian International Trade Tribunal's bid review mechanism. It concludes that while certain reductions to fairness, openness, and transparency are justified and appropriate where the procurement is tied to Canada's national security interests, the negative impacts of the NSE can be minimized through targeted, transparent and proportionate application of the NSE.

My office also continued research on the potential role of a Chief Procurement Officer (CPO) at the federal level, a topic which we



Our study revealed that the establishment of a CPO in other jurisdictions has resulted in greater consistency and standardization in procurement.

published a KDS report about last year. Our study revealed that the establishment of a CPO in other jurisdictions has resulted in greater consistency and standardization in procurement. A CPO can contribute to modernization by acting as an agent of change and creating a clear focal point for procurement information and

the professionalization of the function. CPOs can provide leadership, oversight and guidance in the procurement function, help ensure the consistent application of policy, and support talent management and innovation in the procurement community. It is an option that warrants further consideration.

## Proposed regulatory changes

For the last 2 years, I have drawn attention to areas in the *Procurement Ombudsman Regulations* that I believe reduce the effectiveness of my office in promoting fairness, openness and transparency in federal procurement.

**This year I reiterate my commitment to seeking regulatory changes in the following areas:**

### 1 Recommend compensation greater than 10% of the value of the contract

OPO's ability to review complaints regarding the award of a contract are tied to the thresholds of the Canadian Free Trade Agreement (CFTA). As a result, when I find that a complaint has merit, the maximum compensation I can currently recommend is \$3,030 for goods contracts, and \$12,120 for services contracts. In many cases, these amounts are insufficient to cover the supplier's lost profits or bid preparation costs, let alone the time and expense required to file a complaint and submit documentation to my office. This 10% cap disincentivizes suppliers with

legitimate complaints from seeking recourse. To increase fairness, I recommend the compensation cap be increased to reflect the amount of lost profit a supplier would have received had they properly been awarded the contract.

### 2 Compel federal departments to provide documentation

The Regulations empower the Ombudsman to request that federal departments share any relevant documentation with OPO. As such, departments are currently able to disclose only what they choose to disclose, and can suppress information vital



to conducting fair and transparent reviews without fear of potential consequences. There have been instances where we have had to write to departments during the course of a review to remind them to provide documents that we know exist. The ability to compel the production of documents necessary to conduct investigations and procurement reviews would increase both the fairness and transparency of the procurement process.

### 3 Review complaints related to the Procurement Strategy for Indigenous Businesses

When the set-aside program for Indigenous businesses was originally created, there was no redress mechanism for complaints regarding contracts awarded pursuant to the strategy. Such complaints remain outside the jurisdiction of my Office and that of the Canadian International Trade Tribunal (CITT). As was recently highlighted by the CITT in a December 2021 order, excluding Indigenous suppliers from accessing the CITT's bid challenge mechanism means that "Indigenous suppliers currently have *less* rights of access to justice than non-Indigenous Canadians, and foreign suppliers, who can access the Tribunal when the trade agreements are applicable."<sup>1</sup> This represents a systemic barrier that must be removed. This proposed change to the *Procurement Ombudsman*

*Regulations* will enable my office to review complaints related to the award and administration of contracts under the Procurement Strategy for Indigenous Businesses. This would provide Indigenous suppliers with access to the same impartial and independent review as other Canadian suppliers.

### 4 Change Ombudsman to Ombud

The title of my position and the name of the office should be changed to reflect the nature of the role and office. Similar changes have recently been implemented for newly appointed ombuds at the federal level, and we have fallen behind the times with this long overdue change. It is important that an ombud represent all people, and for this reason I strongly recommend that the name of the role and the office be changed from the "Procurement Ombudsman" to the "Procurement Ombud." The proposed change allows for gender and linguistic neutrality. Throughout the remainder of my Annual Report, we have referred to my role as the Procurement Ombud.



1 CITT File No. PR-2021-045 Asokan Business Interiors v. Department of Finance paragraph 34. [Asokan Business Interiors – Canadian International Trade Tribunal \(citt-tcce.gc.ca\)](https://www.citt-tcce.gc.ca)

# 3

## 2021-22 in review



**APRIL 2021**

- OPO publishes follow-up procurement practice review of Bid Solicitation Processes at Elections Canada



**MAY 2021**

- OPO shares the results of 5 knowledge deepening and sharing studies at CIPMM Webinar



**Directive on Management of Procurement is launched. Departments given 12 months to transition**



**JULY 2021**

- OPO publishes procurement practice reviews of Transport Canada, Parks Canada and non-competitive contracts involving WE Charity
- OPO publishes study on Chief Procurement Officer and shows how the creation of such a role could address recurring issues in federal procurement



**AUGUST 2021**

- OPO launches review of complaint concerning a contract awarded by Global Affairs Canada



**SEPTEMBER 2021**

- OPO publishes procurement practice review of Immigration, Refugees and Citizenship Canada
- OPO publishes study on Force Majeure to help parties to a federal contract understand the key components of the clause and explain its utility



#### DECEMBER 2021

- OPO publishes procurement practice review of the Royal Canadian Mounted Police
- OPO launches review of a complaint with National Research Council Canada. Review later terminated after the supplier withdrew the complaint

#### NOVEMBER 2021

- OPO publishes procurement practice reviews of Natural Resources Canada and the Canadian Border Services Agency

**Mandate letters are released to Ministers. PSPC mandated to increase the diversity of bidders and ensure a minimum of 5% of the value of federal contracts are held by Indigenous businesses**

#### JANUARY 2022

- OPO hosts fourth annual “Diversifying the Federal Supply Chain Summit” to connect diverse and Indigenous business owners with public and private sector programs and organizations that can help them win federal contracts. Approximately 850 participants attend from across Canada

**Minister of Public Services and Procurement launches the Program on Social Procurement to implement the Social Procurement Policy**

#### FEBRUARY 2022

- OPO appears before the Standing Committee on Government Operations and Estimates
- OPO launches reviews of 2 complaints with Parks Canada and Correctional Services Canada

#### MARCH 2022

- OPO launches review of complaint with the Public Health Agency of Canada
- OPO publishes review of complaint concerning a contract awarded by Global Affairs Canada

# 4

## 2021-22 by the numbers

### Total number of cases

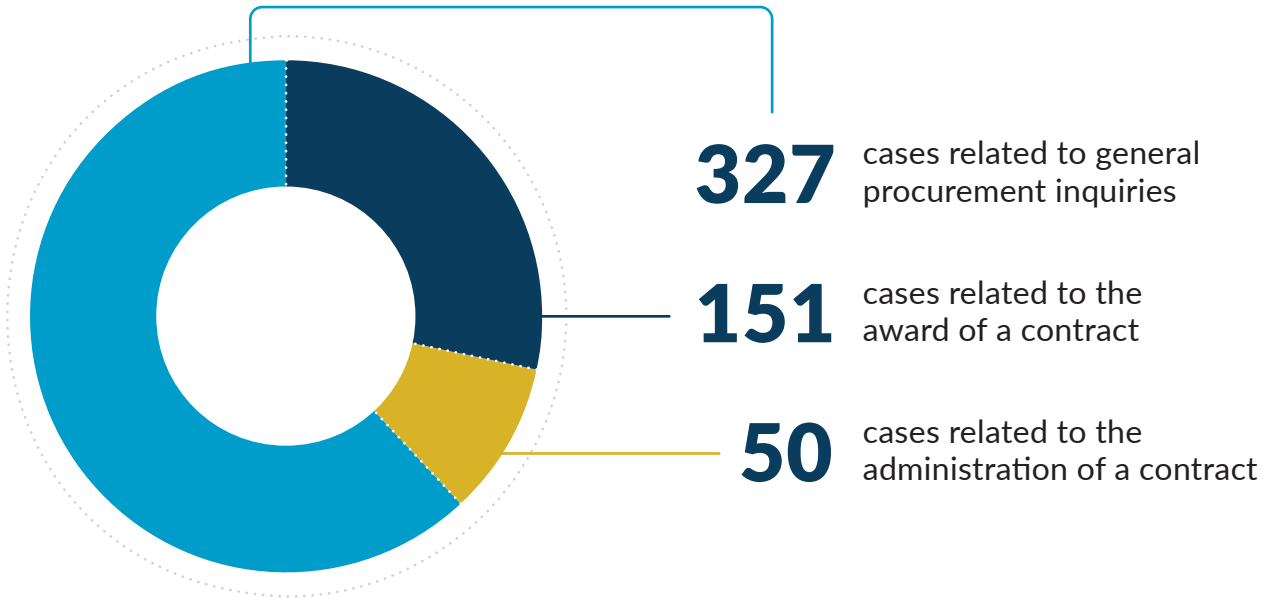
2021-22 ..... 528

2020-21 ..... 437

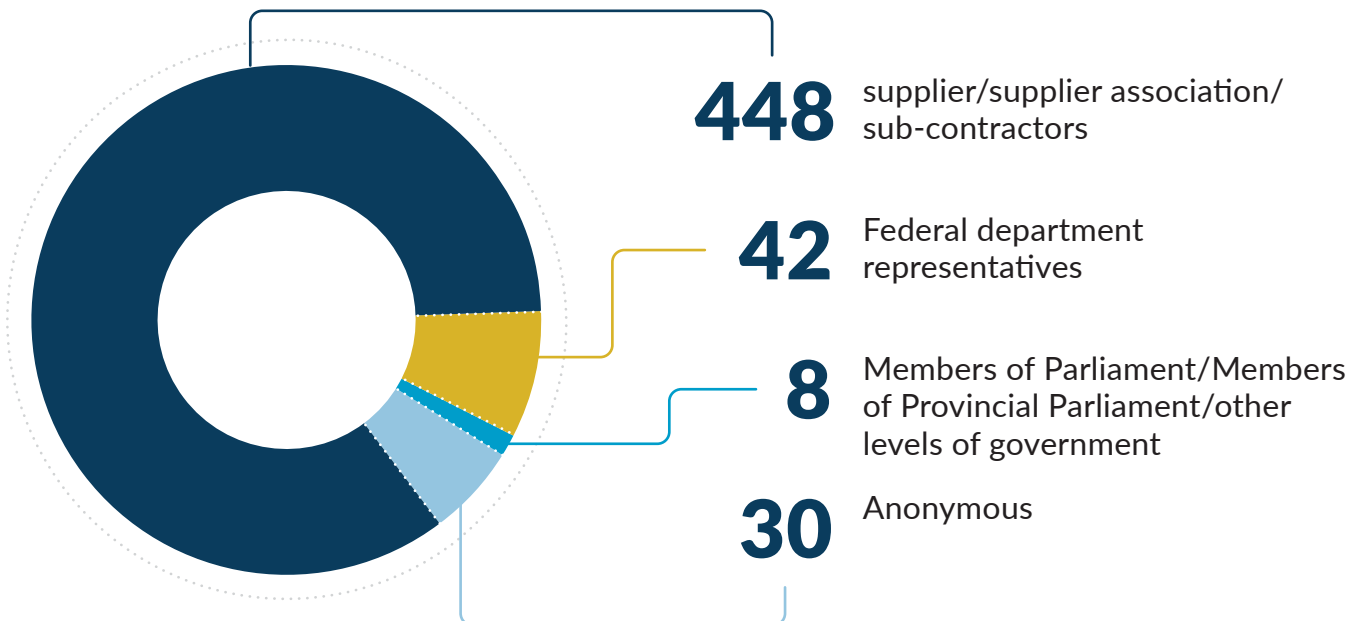
The total number of cases reflects the number of times stakeholders contacted OPO regarding a procurement matter. Stakeholders bring issues to OPO's attention during OPO's annual Diversifying the Federal Supply Chain Summit, at town hall meetings, via the "share your thoughts" link on [PO's website](#), by email, and by contacting our office directly and speaking to a member of OPO's Intake team. Stakeholders include suppliers, federal government employees, and associations representing either suppliers or buyers. A new "case" is created each time a stakeholder brings a procurement-related issue to our attention. Each case may include multiple issues. This year, OPO had 528 cases, which included 826 issues.

OPO tracked the issues raised by suppliers during our fourth annual Diversifying the Federal Supply Chain Summit in January 2022. Over the 2 day summit, attendees, many of whom represent members of diverse and Indigenous groups, had the opportunity to raise concerns and share their thoughts both during and after the various presentations and discussions. These issues have been captured by our team as cases in an effort to provide a voice to these traditionally under-represented groups. This year, OPO's case numbers feature 136 cases including 165 issues that were raised by attendees of the summit.

## Nature of cases



## Who contacted us



# How we reached our stakeholders



We hosted or participated in  
**17**  
information sessions for suppliers



We attended  
**6**  
trade shows



We held  
**7**  
information-sharing sessions with other federal organizations



We met  
**21**  
times with  
Members of Parliament



We delivered  
**13**  
presentations at  
procurement events



We had  
**73,959**  
twitter impressions



We had  
**12,608**  
LinkedIn impressions

# 5

## Top 10 issues in federal procurement

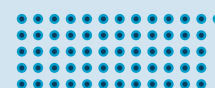
In 2021–22, the Top 10 issues, as reported by our stakeholders, were as follows (including an example for each issue):

**1**

**The stakeholder felt the evaluation criteria were unfair, overly restrictive or biased**

**61**

total issues reported



**Bias for or against an individual supplier or class of suppliers**

The supplier felt the criteria were biased toward the incumbent. They also suspected the incumbent may have provided financial details to the department in advance of the solicitation as evidenced by a “typo” that included the incumbent’s name in the pricing table of the RFP.

**28**

issues reported



**Criteria were unfair/biased**

The supplier felt that the mandatory and rated criteria in requirements are often biased, unnecessary and overly restrictive.

**21**

issues reported



**Criteria is restrictive (content)**

The supplier felt that the limitations on subcontracting found in the mandatory criteria would seriously limit competition.

**12**

issues reported

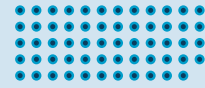


## 2

### The stakeholder believed the evaluation was incorrectly conducted or the contract was awarded to the wrong bidder

59

total issues reported



#### Evaluation incorrectly conducted

The supplier felt the evaluation was not properly conducted as they were deemed non-compliant on a mandatory criterion for not submitting Canadian equivalency of education, which was not required in the RFP.

37

issues reported



#### Contract awarded to non-responsive bidder

The supplier alleged that the winning bidder provided a fraudulent certification and is therefore non-responsive.

15

issues reported



#### Contract awarded to the wrong bidder

The RFP was missing part of the basis of selection clause and the supplier felt that the contract should have been awarded to him as he provided the lowest cost bid.

7

issues reported

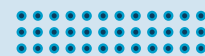


## 3

### The stakeholder reported that the department did not respond, or responded late, to their questions

36

total issues reported



#### Inadequate response(s) provided

The supplier contacted OPO with concerns that the Contracting Authority was not knowledgeable on the technical requirements.

15

issues reported



#### No response(s) provided

The supplier said they were contacted by a Contracting Authority for a requirement, and submitted questions which went unanswered. They then received another email from the same Contracting Authority about a separate requirement. The supplier's phone calls went unanswered, and they are questioning the legitimacy of the emails from this contact.

17

issues reported



#### Department did not respond or responded late to supplier communication(s)

In a contract for language training, the supplier was required to send attendance reports as part of the invoice for payment. The supplier said they lost this information and could not reach the Contracting Authority to discuss a way-forward.

4

issues reported





4

## The stakeholder believed the department was deviating from the terms and conditions of the contract

16

total issues reported



### Department deviating from terms and conditions of the contract

The supplier felt the Contracting Authority was deviating from the terms and conditions of the contract when wanting to change the requirement (from 2 to 3 layer cloth masks) when exercising the option.

16

issues reported



5

## The stakeholder reported payment issues

20

total issues reported



### Payment is late

The supplier contacted OPO and said that the department delayed payment, despite all required tasks and reports having been completed a month prior.

12

issues reported



### Refusal to pay

The contract was terminated for convenience. The supplier said that the final invoice for fees associated with this termination was not paid by the department.

8

issues reported



6

**The stakeholder reported that debriefings were not provided or, if they were held, insufficient information was shared**

16

total issues reported



**Department provided insufficient information or refused to provide explanations**

The supplier said they were informed that they did not meet the experience requirements of the solicitation. The supplier tried to obtain more information about why their bid was deemed unsuccessful, but was repeatedly pointed back to the RFP.

13

issues reported



**Department did not provide a debriefing**

The supplier said they were told they could not be provided any information from the department about why their bid was unsuccessful because the National Security Exception had been invoked.

3

issues reported



7

**The stakeholder believed that the department inappropriately used non-competitive contracting**

8

total issues reported



**Inappropriate use of non-competitive contracting**

A standing offer holder (supplier) felt that the contracts being awarded are inconsistent with the terms of the standing offer. Specifically, they said that one company seems to have been directed the majority of call-ups where the terms of the standing offer dictate how many standing offer holders are to be invited.

8

issues reported



8

**The stakeholder felt the time lag between bid closing date and contract award was too long**

11

total issues reported



**Time lag between bid closing date and contract award is too long**

The supplier felt that too much time had elapsed since bid close without receiving notice of contract award.

11

issues reported



9

**The stakeholder believed the solicitation was either confusing, contradictory, and/or had vague information**

7

total issues reported  
.....

**Confusing/contradictory/vague information**

The supplier felt that the solicitation was not detailed enough to provide a firm price in their bid. Despite efforts to clarify the requirement through the "question and answer" process, the supplier felt the answers provided were not sufficient. The supplier decided not to submit a bid because of the risk of inaccurately pricing the requirement.

7

issues reported  
.....

10

**The stakeholder felt there were was undisclosed criteria or the criteria changed after bid closing**

7

total issues reported  
.....

**Criteria undisclosed or changed after bid closing**

The supplier said their bid was deemed non-compliant for failing to demonstrate strong embassy experience. However, "embassy experience" did not appear as part of the requirement in the solicitation.

7

issues reported  
.....

# 6

## Reporting on results

### Review of complaints



**60**  
written complaints



**55**  
out of mandate



**5**  
ROCs Launched

The Procurement Ombud investigates formal complaints from suppliers about the award of certain federal contracts. To launch a review into the award of a contract, the complaint must meet all criteria identified in the *Procurement Ombudsman Regulations*, including:

- The complaint must be from a Canadian supplier
- The complaint must be filed in writing within 30 working days after public notice of the award of the contract or, if there was no public notice, within 30 working

days after the award of the contract became known or reasonably should have become known to the complainant

- The contract would have been subject to the Canadian Free Trade Agreement, were it not for the value of the contract falling below the applicability thresholds of \$30,300 for goods contracts or \$121,200 for services contracts
- The facts and grounds on which the complaint is based are not, and have not been, the subject of an inquiry before the Canadian International Trade Tribunal or a proceeding in a court of competent jurisdiction
- There are reasonable grounds to believe that the contract was not awarded in accordance with regulations made under the *Financial Administration Act*

To launch an review into the administration of a contract, the complaint must meet all criteria identified in the *Procurement Ombudsman Regulations*, including:

- The complaint must be from the Canadian supplier that was awarded the contract
- The complaint must be filed in writing within 30 working days after the day the complainant became aware, or reasonably should have become aware, of the grounds on which the complaint is based.

Or within 30 working days after the day on which the contracting department denied the complainant's objection

- The interpretation and application of the terms and conditions or the scope of the work of the contract are not in dispute between the parties

## Reviews of complaints completed in 2021–22

### 1 Acquisition of project evaluation services by the Department of Foreign Affairs, Trade and Development



On August 4, 2021, OPO received a written complaint regarding a contract awarded by the Department of Foreign Affairs, Trade and Development (DFATD). The contract was to perform a summative evaluation of the Canada-Ukraine Trade and Investment Support Project. The contract was awarded on August 3, 2021, and valued at a maximum of \$97,339 (applicable taxes extra).

The review of the complaint concluded that DFATD did not structure the solicitation to exclude the Complainant's bid, as the wording causing the Complainant's concern was found to be acceptable.

However, DFATD did not conduct the solicitation process in accordance with its obligations, as the solicitation should have been posted on a government electronic tendering service (GETS) site to maximize visibility and coordination of the solicitation. DFATD also failed to keep sufficient records to document its decisions, making it impossible to conclude whether the Complainant's bid was properly evaluated and whether it should have been deemed compliant. Finally DFATD did not provide the Complainant with an adequate debriefing, including detailed information explaining its rationale for disqualifying the Complainant's bid.

The Procurement Ombud recommended DFATD pay compensation to the Complainant in an amount equal to 50 percent of its costs for preparing and submitting its bid.

The complete report is available on [OPO's website](#).

# Reviews of complaints that were terminated in 2021–22

## 1 Complaint regarding refusal to pay by the National Research Council resolved and review terminated



In December 2021, OPO received a written complaint regarding the refusal of the National Research Council to pay an invoice that had been submitted in June 2021. On December 23, 2021, the Procurement Ombud notified the Complainant and the National Research Council that an investigation had been launched. Shortly thereafter, the Procurement Ombud was notified that the Complainant had received payment from the National Research Council and had withdrawn the complaint. In accordance with paragraph 10(a) of the *Procurement Ombudsman Regulations*, the Ombud was required to end the review and notify the parties.

## 2 Complaint regarding the award of phase II upgrade to the fuel system at a minimum security institution by Correctional Services Canada terminated after department canceled contract



In February 2022, OPO received a complaint regarding a contract issued by the Correctional Service of Canada (CSC) for a construction project to upgrade the fuel system for the site generator at a minimum security institution.

The contract represented phase II of the overall initiative to upgrade the fuel system, and was preceded by a phase I contract which, in part, required the contractor to provide full drawings and specifications to be used as technical documentation and as the basis for the phase II solicitation. The phase I contract also required the contractor to provide technical and inspection expertise during the execution of the phase II contract.

The contract at issue (phase II) was awarded to the same contractor who was awarded the phase I contract. The Complainant alleged the winning supplier's involvement with the phase I contract put them in a conflict of interest position and provided them with an unfair advantage regarding the phase II contract.

In February 2022, OPO launched its review. In March 2022, CSC responded to OPO and acknowledged that it should not have advised the phase I contractor that it could bid on phase II, and should not have awarded both the phase I and phase II contracts to the same supplier. CSC then issued a Suspension of Work notice ordering the contractor to immediately cease working on the contract. In March 2022, CSC terminated the contract by mutual consent.

According to paragraph 10(c) of the *Procurement Ombudsman Regulations*, when a contract is cancelled, the Ombudsman must end the review. Accordingly, CSC and the Complainant were advised on March 23, 2022, that OPO's review had been terminated.

## Reviews of complaints to be completed in 2022–23



The Procurement Ombud launched 2 additional reviews of a complaints in February 2022, which will be completed in 2022–23 in accordance with the legislative timelines set forth in the *Procurement Ombudsman Regulations*. These reviews pertain to contracts issued by the Public Health Agency of Canada and Parks Canada.

# Procurement practice reviews



**7** completed procurement practice reviews

- 6 planned
- 1 ad-hoc



**31** recommendations



**6** ongoing reviews will be completed in 2022–23, including one follow-up review

The Office of the Procurement Ombud conducts reviews of departmental procurement practices for acquiring materiel (i.e. goods) and services to assess their fairness, openness and transparency, if there are reasonable grounds to do so, and make any appropriate recommendations to the relevant department for the improvement of those practices. This year, OPO completed 7 procurement practice reviews. This included 6 planned reviews conducted as part of OPO's 5-year plan, and 1 unplanned (i.e. ad-hoc) review of non-competitive contracts awarded to WE Charity.

Under its 5-year plan, OPO is using a standardized program to review the procurement practices of the top procuring federal departments and agencies. The objective of these reviews is to determine whether procurement practices relating to evaluation and selection plans, solicitation, evaluation of bids and contract award are conducted in a fair, open and transparent manner.

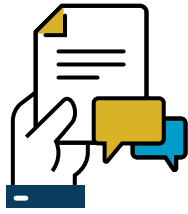
The full reports of completed reviews and follow-up activities are available on [OPO's website](#). OPO conducts a follow-up review 2 years after the completion of each review to assess the status of the implementation of the Procurement Ombud's recommendations.

## Procurement practice reviews completed in 2021–22

Regarding the 6 summaries of procurement practice reviews that follow immediately below: each department's procurement practices pertaining to evaluation and selection plans, solicitation, and evaluation of bids and contract award were assessed for consistency with Canada's obligations under applicable sections of national and international trade agreements, the *Financial Administration Act* and regulations made under it, the Treasury Board Contracting Policy (TBCP) and departmental guidelines, and to determine if they supported the principles of fairness, openness and transparency.



## 1 Transport Canada



**4**  
RECOMMENDATIONS

OPO concluded that for the files where there was adequate documentation to review the entire file, evaluation criteria and selection plans met requirements set out in applicable laws, regulations and policies and, for the most part, mandatory and point-rated criteria were clearly communicated. However, there were issues regarding unclear evaluation criteria, where mandatory or rated criteria had vague or poorly defined descriptors, and several instances where evaluation criteria appeared to favour a certain bidder.

Solicitation documents and actions taken by Transport Canada (TC) during the solicitation process were, in most cases, consistent with applicable rules. However, certain shortcomings were noted regarding some aspects of correspondence with suppliers, including communications during the solicitation period and when advising bidders of the evaluation results via regret letters.

Regarding the evaluation of proposals, TC staff either missed, or ignored, what could have been a disqualifying flaw in 10 files. File documentation was also found to be incomplete in 30 of the files assessed, however TC's ability to access hard-copy files during the COVID pandemic was noted.

### **The Procurement Ombud made 4 recommendations to Transport Canada:**

- 1.** Establish a quality control framework to ensure evaluation criteria are measurable, fair and do not favour a particular bidder/group of bidders
- 2.** Review and update its Contract Procedures Manual and any model templates to reflect current procurement policies, especially as it related to information exchanges with suppliers. In addition, "regret" letters must consistently include an outline of the factors from the bid and criteria that caused the bid to be unsuccessful
- 3.** Establish mechanisms to ensure bid evaluations: 1) adhere strictly to the evaluation criteria in solicitations; 2) are carried out in accordance with planned approaches; and 3) are appropriately documented
- 4.** Establish a mechanism to enforce the requirement to document every decision of business value and maintain up-to-date and complete procurement files

## 2 Parks Canada



4

RECOMMENDATIONS

OPO concluded that evaluation criteria and selection plans were established in accordance with applicable laws, regulations and policies in the majority of the 40 files reviewed. In all files, selection methodologies were clearly communicated, and evaluation criteria were aligned with requirements and were not unnecessarily restrictive. However, several observations regarding unclear evaluation criteria and rating scales for point-rated criteria were noted.

Solicitation documents and actions taken by Parks Canada during the solicitation process were, in most cases, consistent with applicable rules. In all but 2 files, there was evidence of appropriate communications with suppliers during the solicitation period, and in most cases, solicitations contained clear and complete information and instructions for submitting bids. However, information in certain solicitation documents was found to be incomplete, incorrect, or contradictory, which may impact a supplier's ability to prepare and submit responsive bids.

The majority of files reviewed were adequately documented and demonstrated that evaluation of bids and contract awards were performed in accordance with the solicitation. OPO did, however, observe certain evaluations that were not consistently carried out in accordance with the planned approach or were not adequately documented.

### **The Procurement Ombud made 4 recommendations to Parks Canada:**

1. Ensure that its existing Guide for the Bid Evaluation Process is followed and that evaluation criteria and ratings scales are communicated in solicitations in a clear, precise, and measurable manner
2. Develop and implement a process to ensure the completeness, consistency and accuracy of all information contained in solicitation documentation to avoid discrepancies in its solicitation processes
3. Implement appropriate supervision and review mechanisms to ensure evaluations are carried out in accordance with the planned approach and are appropriately documented to support the transparency of the award process
4. Update its procurement guidance to clarify procedures and documentation requirements related to evaluator conflict of interest attestations

### 3 Immigration, Refugees and Citizenship Canada



**3**  
RECOMMENDATIONS

OPO concluded that the solicitation documents reviewed consistently identified evaluation criteria and the selection method to determine the successful bid. However, in some limited circumstances, evaluation criteria were not communicated in a clear, precise and measurable manner.

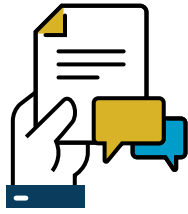
The design and execution of competitive solicitation processes were consistent with applicable rules, regulations and policies in all but 1 of the 35 files reviewed. However, in some limited circumstances, communications with suppliers lacked transparency, both during the solicitation period and when advising bidders of the evaluation results via regret letters.

Immigration, Refugees and Citizenship Canada had established a standard process for evaluating proposals complete with detailed guidance for evaluators. However, in some limited circumstances, evaluations were not consistently carried out in accordance with the planned approach, and in 2 files contracts were awarded to non-responsive bidders.

#### **The Procurement Ombud made 3 recommendations to Immigration, Refugees and Citizenship Canada:**

- 1.** Establish a quality control process to ensure mandatory criteria are adequately defined and communicated in a clear, precise and measurable manner, and that mandatory criteria are limited to the essential qualifications necessary to fulfill the requirement
- 2.** Ensure that the information that is communicated to suppliers both during and after the solicitation process is accurate and that adequate documentation of these communications is retained to facilitate management oversight
- 3.** Ensure that evaluations adhere strictly to the evaluation criteria and are carried out in accordance with the planned approach

## 4 Canada Border Services Agency



**5**  
RECOMMENDATIONS

OPO concluded that evaluation criteria and selection plans met requirements set out in applicable laws, regulations and policies and that for the most part, mandatory and point-rated criteria were clearly communicated. However, there were issues regarding unclear evaluation criteria, where mandatory or rated criteria had vague or poorly defined descriptions.

Solicitation documents and actions taken by Canada Border Services Agency (CBSA) during the solicitation process were, in most cases, consistent with applicable rules. However, several issues were noted regarding communications with suppliers, including providing clear instructions for bid submission, communications during the solicitation period, and when advising bidders of the evaluation results via regret letters.

OPO noted considerable deficiencies in bid evaluations and documentation. Certain evaluations were not consistently carried out in accordance with the planned approach or were not adequately documented. Furthermore, OPO observed instances where CBSA failed to disqualify non-compliant bids, and awarded at least one contract to a non-compliant bidder. File documentation was also found to be incomplete and of significant concern in several files.

### **The Procurement Ombud made 5 recommendations to CBSA:**

- 1.** Establish a quality control process to ensure mandatory criteria are adequately defined and communicated in a clear, precise and measurable manner
- 2.** Establish mechanisms to: 1) ensure that solicitations contain clear instructions for submitting bids; 2) ensure that relevant information is shared with all suppliers simultaneously; and 3) ensure all relevant communications with suppliers are properly documented
- 3.** Establish a mechanism to ensure that evaluations adhere strictly to the evaluation criteria and are carried out in accordance with the planned approach, and that contracts are not awarded to non-compliant bidders
- 4.** Establish a mechanism to enforce the requirement to document every decision of business value and maintain up-to-date and complete electronic procurement files

5. Ensure that any officials engaging in the procurement process receive adequate support and training to ensure that sound stewardship practices are followed and that Canada's obligations under applicable sections of national and international trade agreements are respected

## 5 Natural Resources Canada



**8**  
RECOMMENDATIONS

OPO concluded that mandatory criteria in solicitation documents were aligned with requirements and were not overly restrictive; however, a majority of files included mandatory criteria that were not defined in a clear, precise or measurable manner.

Solicitation documentation was mostly complete; however, several opportunities for improvement were noted regarding the description of requirements and instructions to bidders. Solicitations also contained inappropriate wording about a certification required before contract award.

Inconsistencies in the evaluation of bids and deviations from the planned approach were noted and in several instances contracts were incorrectly awarded. File documentation was also incomplete in several files.

The Procurement Ombud also noted one instance of the perception of contract splitting, one case where internal procedures were not followed with respect to a requirement subject to the Nunavut Land Claims Agreement, and one case where the estimated value of a requirement was not established before soliciting bids.

### **The Procurement Ombud made 8 recommendations to Natural Resources Canada:**

1. Establish a quality control process to ensure mandatory criteria are adequately defined and communicated in a clear, precise and measurable manner
2. Update its internal guidance to provide information with respect to the development of evaluation criteria and selections plans and ensure that evaluation criteria, scoring grids and selection methodologies are communicated in solicitations in a clear, precise, and measurable manner
3. Correct the wording used in its RFP template(s) so that the purpose of the Indigenous designation certification is clear to all potential bidders

4. Establish a process to ensure that information communicated to suppliers prior to bid closing is clear and that adequate documentation of these communications is retained to facilitate management oversight. In addition, NRCan should establish a process to ensure that contract award notices for applicable files are published within the required timeframe and that regret letters are always sent to unsuccessful suppliers in a timely manner
5. Establish processes to ensure that: (1) evaluation instructions are consistently provided to evaluators; (2) non-compliant bids are disqualified and not further assessed; and (3) technical evaluations adhere strictly to the evaluation criteria and scoring grids in solicitations; and are carried out in accordance with planned approaches
6. Establish processes to ensure: (1) evaluations are appropriately documented to support the transparency of the award process; and (2) procurement files are complete and kept up-to-date
7. Establish a process to review planned procurements to ensure aggregate requirements are not inappropriately divided to avoid controls or trade agreement obligations
8. Update its Contracting Desktop Procedures to comply with the Nunavut Land Claims Agreement and Treasury Board Directive on Government Contracts, Including Real Property Leases, in the Nunavut Settlement Area and establish a process to ensure its procedures are followed with respect to Comprehensive Land Claims Agreement obligations

## 6 The Royal Canadian Mounted Police



**4**  
RECOMMENDATIONS

OPO concluded that evaluation criteria and selection plans were established in accordance with applicable laws, regulations and policies in the majority of files reviewed. Mandatory evaluation criteria were clearly communicated, not unnecessarily restrictive, and aligned with the requirement in most cases. While exceptions were identified, overall, the selection methodology reflected the complexity of the requirement and was clearly communicated in solicitation documents. A contributing factor to these overall positive results was the oversight provided by the Royal Canadian Mounted Police's (RCMP's) Contract Quality Control (CQC) function.

OPO concluded that solicitation documents and actions taken by the RCMP during the solicitation process were, overall, consistent with applicable rules. Most solicitations contained clear and complete information and instructions necessary for bidders to prepare a compliant bid and the design and execution of solicitation processes supported fair, open and transparent procurement. OPO did note some problematic exceptions where solicitation processes did not respect the principles of fair, open and transparent procurement, including one file where the requirement was modified after quotes were received in an effort to get the price below a trade agreement threshold, and two files where the required call-up procedures were not followed.

Evaluation of bids and contract award were generally conducted in accordance with the solicitation; however, in one file the contracting authority contacted a bidder after the bidding period had closed to request required documentation that had not been included with the bid, resulting in an improper practice known as bid repair. In addition, OPO noted that greater consistency in the documentation of bid evaluation results is required to demonstrate the equal treatment of bidders.

**The Procurement Ombud made 4 recommendations to the Royal Canadian Mounted Police:**

- 1.** Expand the scope of procurements that are subject to the Contract Quality Control review to include solicitations with technical evaluation criteria that are not currently reviewed because they are issued under supply arrangements
- 2.** Implement a standard approach to record results from the financial evaluation of bids
- 3.** Implement an effective mechanism to enforce the requirement to maintain up-to-date and complete procurement files
- 4.** Make greater use of technology in their procurements including, but not limited to, allowance for bids to be submitted electronically and alternatives to traditional paper-based methods for managing contract files

## 7 Review of non-competitive contracts involving WE Charity



**3**  
RECOMMENDATIONS

The Procurement Ombud conducted a review of contracts awarded to WE Charity and its affiliates to determine whether contracts awarded on a non-competitive basis, and associated amendments, were issued in a manner consistent with applicable legislation, regulations, policies, procedures and guidance. For this review, OPO examined 6 contracts that had been awarded to WE Charity since 2017 by 4 federal departments: Canada School of Public Service (CSPS), Global Affairs Canada (GAC), Privy Council Office (PCO) and the Public Health Agency of Canada (PHAC).

OPO concluded that the use of non-competitive processes for awarding these contracts was consistent with the requirements of the *Government Contracts Regulations*, and that the decisions to award the contracts without competition were justified and appropriately documented in all contract files. However, issues regarding fairness were identified in the establishment of cost estimates, which should have been established and documented on file prior to contacting WE Charity about the contracting opportunity and requesting pricing.

### **Several opportunities for improvement were noted in the review, which led the Procurement Ombud to make 3 recommendations:**

- 1.** To CSPS, PHAC, GAC and PCO: To ensure the fairness of the procurement process, departments should not contact a prospective supplier, share information about an upcoming requirement, and request proposed pricing through a non-competitive process prior to establishing and documenting an estimate for the acquisition of goods or services
- 2.** To PCO: Establish a process to ensure mandatory PSPC standing offers and supply arrangements are used when required or alternatively that a timely exemption from their use is sought and received prior to contracting
- 3.** To GAC and PCO: Recognizing there will be contract requests that have tight timelines, review existing procurement controls to ensure that processes can be followed with appropriate due diligence and effective stewardship



# Procurement practice reviews launched in 2021–22 to be completed in 2022–23



As part of the 5-year review plan, the Procurement Ombud launched an additional 5 reviews in 2021–22, which will be completed in 2022–23 as per legislative timelines. These include reviews of:

- Department of National Defence
- Shared Services Canada
- Innovation Science and Economic Development
- National Research Council
- Correctional Service Canada

The Procurement Ombud also launched a follow-up review regarding a review of the Canadian Food Inspection Agency that was completed in 2019. The purpose of the follow-up review is to assess the status of the department’s implementation of the Procurement Ombud’s recommendations and document this performance in the form of a scorecard.

# Observations on the state of federal procurement

The following section draws attention to some of the persistent procurement issues that OPO has observed across federal departments over the last 4 years. These observations may be beneficial to departments seeking to improve the fairness, openness and transparency of their procurement practices.

## Mandatory criteria should be clearly defined and limited to essential qualifications

When developing mandatory criteria, all departments should be mindful that criteria are limited to only those qualifications necessary to deliver the requirement and communicated in clear, measurable language.

The inclusion of unnecessary evaluation criteria, particularly as mandatory criteria, unnecessarily complicates the procurement process by making it administratively burdensome for bidders. It also increases the potential for bidders to make mistakes and have their proposal deemed non-responsive for failing to meet a mandatory

criterion that was not essential to the performance of the contract. An example of an unnecessary mandatory criterion is requiring bidders to identify a single point of contact. While useful from an administrative standpoint, this criterion is unrelated to the bidder's ability to perform the work and is not aligned with requirements.

OPO has also observed a high number of solicitations where mandatory criteria were inadequately defined, and were not communicated in a clear, precise and measurable manner. For example, OPO has repeatedly observed mandatory criteria that require bidders to demonstrate 'experience' but do not specify how much experience is required. As a result, any amount of experience would result in the criteria being met. OPO has similarly witnessed the inclusion of mandatory criteria that cannot be evaluated on a pass or fail basis at the time of bid close, and can only be demonstrated through the performance of the contract. Requirements such as these belong in the contract awarded to the successful bidder as they relate to the performance of required services in the future, whereas mandatory criteria are more suitable to determine skills or experience held by the supplier at bid close.

## Retaining records of business value

Departments are required to ensure that adequate documentation of key decisions is preserved to support management oversight and establish an audit trail. Inadequate documentation remains a frequent observation in OPO's reviews of departmental procurement practices. Records of key decisions are either absent from the procurement file, as was noted in the summaries of procurement practice reviews completed in 2021–22, or buried in superfluous documentation.

With the transition to electronic record-keeping and many public servants now working remotely, OPO has observed a trend where vast amounts of information that lack business value are being indiscriminately saved. To be clear, the requirement to establish an adequate audit trail supports transparency by ensuring that records can be efficiently accessed when required. Departments should be mindful to assess information for its business value and retain only the information that provides support for decisions made.



# Alternative dispute resolution



OPO offers ADR services in the form of facilitation and mediation, for suppliers and federal officials that encounter a dispute during the administration of a contract. These services are voluntary, which means they will only be provided if both parties agree to participate in the process. When both the supplier and department agree to participate in OPO-led mediation, it often leads to a mutually agreed-to resolution of the contract dispute. OPO's mediation services are a quick, no-fee (i.e. low cost), effective alternative to the stressful, expensive and time-consuming process of litigation.

Over the years, OPO has seen some departments decline to participate in mediation, despite the suppliers requesting it and wanting to find a mutually agreeable resolution. Rather than engage in mediation, departments have sometimes elected to resolve disputes by terminating the contract and ending discussions with the contractor. Even in instances where the contract has been terminated, there may still be outstanding issues, such as compensation for work completed to date, that remain unresolved. In most instances, OPO can still provide mediation services even after the contract has been terminated to help the parties work through any remaining issues.

In 2021–22, 3 departments declined to participate in OPO's mediation services: Health Canada, Natural Sciences and Engineering Research Council and Employment and Social Development Canada.



In 2021–22,  
OPO received

**7**

requests for Alternative  
Dispute Resolution  
(ADR) services

Last year, 3 requests for ADR services were pending at the close of the fiscal year on March 31, 2021.

The outcome of those requests is as follows:

- **In 1 case**, the department declined to participate
- **In 1 case**, the supplier withdrew the request
- **In 1 case**, the parties resolved their dispute through a settlement agreement without mediation



**1**

request went to mediation,  
but did not result in a  
signed agreement



**6**

requests did not  
go to mediation

- **In 3 cases**, the department declined to participate
- **In 1 case**, the request did not meet the *Procurement Ombudsman Regulations*
- **In 2 cases**, the supplier withdrew the request



# 7

## OPO's operating environment

2021–22 was a year of significant change in federal procurement. These changes will have a substantial impact on OPO's stakeholders (i.e. Canadian businesses and federal government procurement officials). Some of the key highlights of this year are summarized below.

### Supplier diversity

In January 2022, the federal government took additional steps to deliver on its commitment to supplier diversity. At OPO's 4th annual Diversifying the Federal Supply Chain Summit, the Minister of Public Services and Procurement, announced the launch of the Supplier Diversity Action Plan. PSPC's Policy on Social Procurement represents the cornerstone of this plan and all procurements carried out by PSPC's Acquisitions Program. This policy operates within the current legal, regulatory and policy frameworks, and trade agreement requirements, and relies on voluntary self-declaration that the supplier is from an underrepresented group.

In August 2021, a series of comprehensive changes were announced to the Procurement Strategy for Indigenous Business (PSIB) program to increase federal procurement opportunities for Indigenous businesses across Canada. This included a mandatory requirement for federal departments and agencies to ensure a minimum of 5% of the total value of contracts are held by Indigenous businesses by 2024. It also involves expanding the geographical

areas where federal organizations must first consider procuring with Indigenous businesses, and broadening the definition of "Indigenous business" to enable more businesses to meet the eligibility criteria.

In line with the federal government's commitment to increase the number of Indigenous businesses in the federal supply chain, the Procurement Ombud has requested a change to the *Procurement Ombudsman Regulations* to include the review of complaints related to contracts awarded under the PSIB set-aside program. To date, contracts awarded under this program fall outside the jurisdiction of OPO and the CITT, as they are excluded from the obligations under the Canadian Free Trade Agreement (CFTA) and other trade agreements. This lack of access to OPO and the CITT represents a systemic barrier that prevents Indigenous suppliers from accessing the same independent and impartial recourse mechanisms as other Canadian suppliers.

## Featured case

A supplier participated in an OPO town hall, and reported that there is a lack of support for suppliers with disabilities who are trying to do business with the Government of Canada. As a visually-impaired Canadian supplier, he conveyed that the procurement process is particularly hard for suppliers who are visually impaired and accessibility is not taken into consideration in the design of procurement processes. The Procurement Ombud took note of this issue and has raised it with PSPC's Accessible Procurement Resource Centre.

## Pandemic procurement

For the second consecutive year, the COVID-19 pandemic continued to shape the purchasing activity of the federal government. The invocation of the National Security Exception (NSE) in the early months of 2020 resulted in less transparency in government purchasing. Applied to all procurements in support of the government's response to the pandemic, the blanket NSE is scheduled to remain in effect until the World Health Organization declares that COVID-19 no longer represents a public health emergency.

The implications of this decision are significant. The invocation of the NSE allows departments to exclude a procurement from some or all of Canada's obligations under the trade agreements. This year, OPO received several complaints from suppliers regarding their inability to obtain information about the results of solicitation processes, and why their bid was deemed unsuccessful. Similarly, OPO has been contacted by members of the media seeking assistance in how to access information regarding COVID-related procurements, which are not required to be published under proactive disclosure requirements.

In order to provide some insight on the NSE and its implications on fairness, openness and transparency, OPO launched a Knowledge Deepening and Sharing study on this topic. The results of this study can be found on [OPO's website](#).

## New policy instruments

In 2020, PSPC began testing a pilot version of their policy on Vendor Performance Management. Once fully implemented, this policy will establish the approach for PSPC and its client departments to assess vendor performance results and consider past performance information in awarding future contracts. OPO has been asked to assume responsibility for managing the appeal mechanism for vendors who wish to dispute their final performance score. This will provide vendors with an independent and impartial avenue of recourse through a med-arb process. Under such a process the parties would engage in mediation in an effort to find a mutually agreeable resolution. If a resolution cannot be achieved through mediation, the process would progress to arbitration whereby the arbitrator, OPO, would make to a binding decision.

The new Treasury Board Directive on the Management of Procurement, which replaces the Treasury Board Contracting Policy, was launched in May 2021. Departments were provided a 1 year transition period to fully implement this directive.

Phasing out of the Treasury Board Contracting Policy is expected to have a significant impact on OPO's work and how the office fulfills its mandate. OPO is responsible for assessing whether departmental practices support the principles of fairness, openness and transparency. OPO has traditionally carried out this mandate through compliance-based reviews against the procedural rules contained in the Contracting Policy and applicable trade agreements.

As departments shift toward the outcomes-based, lifecycle approach to sound stewardship and best value under the new Directive, each department has the flexibility to develop its own procurement framework to ensure that these principles are respected. As a result, procedural rules are expected to vary across departments according to the complexity and risk of the requirement.

Determining whether a department's actions support the principles of fairness, openness and transparency in this new policy environment will likely require a greater reliance on the role of the Procurement Ombud who may be asked to provide interpretations to ensure consistency in understanding of the new obligations.

## Growth of the ombuds function

This year, new ombud offices in Canada were created. In November 2021, the Province of Prince Edward Island named their first ombudsperson. In February 2022, Indigenous Services Canada announced that it would fund the establishment of a First Nations Health Ombudsperson's office in Saskatchewan. The office will work to address anti-Indigenous racism and discrimination in health care.

We also witnessed the discussions begin to shift towards equitable, as opposed to equal, treatment as the core tenet of fairness. Fairness is at the heart of every ombud's office and it is one of the 3 principles that OPO has been mandated to uphold in federal procurement. In the federal procurement community, fairness has typically been anchored to the equal treatment of all bidders. This understanding of fairness extended to OPO's role, which involved assessing whether procurement rules and regulations were consistently and equally applied to all bidders.

With the changing discourse, we are seeing a rise in social procurement programs and expansions to the Procurement Strategy for Indigenous Businesses. The release of the Directive on the Management of Procurement, which provides less prescriptive guidelines for how federal departments and agencies should conduct their procurement, provides an opportunity for federal officials to build more equitable practices into their procurement frameworks.



# 8

## Knowledge Deepening and Sharing

Each year, OPO scans the federal procurement environment to identify emerging trends, recurring issues, and knowledge gaps. From this analysis, research topics are selected that are of current interest to our stakeholders, including buyers and suppliers.

These research studies are available on [OPO's website](#) and the office shares the results of this research as broadly as possible. This year, OPO presented the results of previous studies “Force Majeure” and “Chief Procurement Officer” at the Canadian Institute for Procurement and Material Management Virtual Summit and to PSPC's Client Advisory Board.

A summary of the 2 newest studies that were completed this year is provided below, and the full reports are available on [OPO's website](#).

### National security exception

This study explored the construct and application of the National Security Exception (NSE) and its impact on government procurement through the lens of fairness, openness and transparency.

Through an analysis of legislation, policy, and rulings by the CITT, the study showed how the broad application of the NSE has reduced transparency, while also insulating these procurements from traditional accountability mechanisms. It

concluded that while certain reductions to fairness, openness, and/or transparency are justified and appropriate where the procurement is tied to Canada's national security interests, the negative impact of the NSE can be minimized through targeted, transparent and proportionate application of the NSE where possible.

### Social procurement and set-aside programs

This study built off of OPO's previous examination of social procurement and explored a specific facet of social procurement: set-aside programs.

Set-aside programs aim to increase procurement opportunities for under-represented and/or diverse and Indigenous suppliers. The report explored the structures and implementation of the set-aside programs, both within Canada at the federal level with the PSIB, and internationally in Australia, the European Union and the United States. This study examined both the strengths and weaknesses of different approaches to set-aside programs. It touched on several considerations for the use of procurement set-asides, including the importance of overcoming the value attributions associated with open competition and investing in the collection of meaningful data.

# 9

## Diversifying the Federal Supply Chain Summit

This year marked OPO's 4th annual Diversifying the Federal Supply Chain Summit. This summit aims to connect under-represented Canadian business owners with representatives from the Government of Canada, supplier councils and other organizations that can help diverse and Indigenous suppliers win federal contracts.

For the second consecutive year, the Summit was held virtually due to the restrictions on public gatherings. Approximately 850 participants attended the Summit from across Canada. During 2 half-day sessions, participants learned about programs and resources available to diverse and Indigenous suppliers seeking to do business with the Government of Canada.

Participants had the opportunity to engage with representatives from the Government of Canada, supplier councils, and private sector organizations.

Among the key messages was the importance of data in establishing baselines, and developing performance measures to assess the outcomes of these social procurement programs.

“ The whole event is VERY professional, and I think it's even better than if it would have been in a real physical place. Sharing the screen, showing the platform, information in both languages and in sign language; it is just so well done!

“ It was a discovery for me and I know now that I will be supported and listened to.  
*[translation]*

# 10

## Looking ahead

Looking ahead to 2022–23, OPO will continue to support its stakeholders as they navigate the changes taking place in federal procurement.

### Procurement practice reviews

In May 2022, the Treasury Board Contracting Policy was replaced by the Directive on the Management of Procurement. This directive is less prescriptive and requires that each federal organization establish its own procurement framework. As a result, procurement practices across departments are expected to vary based on the nuances within each framework.

OPO repeatedly hears from suppliers that they are frustrated by the lack of standardization across departments. In addition to monitoring and reporting on this trend as departments implement and adjust their newly developed procurement frameworks, OPO will continue to identify good practices through our reviews of departmental procurement practices and share these results broadly so that they can be adopted by others.

This year will also mark the conclusion of OPO's 5-year plan to review the procurement practices of the top procuring federal departments and agencies. The objective of

this plan was to provide an assessment on the state of federal procurement by reviewing the 3 highest risk procurement elements through a standardized review program. As this plan comes to its conclusion in 2022–23, OPO looks forward to sharing the results.

### Outreach

Ensuring that stakeholders are aware of OPO's services is the first step in how we help. Over the years OPO has worked to reach our stakeholders through town hall meetings, email communications, social media posts, and including language about OPO services directly in solicitation documents, contracts and regret letters. OPO will continue to host and attend numerous outreach activities both virtually and in person, where permitted, in an effort to help Canadian suppliers and federal departments with procurement issues.

OPO incurs costs associated with outreach activities such as advertising, travel, and accommodations. For the past 2 years, the costs associated with reaching our stakeholders were uncharacteristically low, as a result of the shift towards virtual meetings due to the restrictions placed on in-person

gatherings. Savings in this area were used to cover budget shortfalls in other operational areas. As these restrictions are lifted, OPO's in-person outreach activities are expected to resume and additional funding will be required in order to sustain these, and other activities such as OPO's Knowledge Deepening and Sharing research studies and the Diversifying the Federal Supply Chain Summit.

## Regulatory changes

Based on 14 years of lessons learned since the office was established in 2008, OPO will be focusing efforts on implementing important changes to the *Procurement Ombudsman Regulations* that will benefit both Canadian businesses and federal departments in the areas of fairness, openness and transparency. These include the authority to:

1. Recommend compensation to suppliers in an amount greater than 10% of the value of the contract
2. Compel (rather than request) departments to provide documentation to enable OPO to conduct procurement reviews
3. Review complaints related to the Procurement Strategy for Indigenous Businesses (PSIB) to ensure that Indigenous suppliers have access to the same methods of recourse as other Canadian suppliers

4. Change the title of Procurement Ombudsman to Procurement Ombud to reflect the gender and linguistic neutrality of the role

## Expanding role

Over the past 4 years, OPO has expanded its role to include the annual delivery of the Diversifying the Federal Supply Chain Summit, the development of 2–3 research studies a year under the Knowledge Deepening and Sharing (KDS) business line, and OPO has been asked to assume the dispute settlement role for PSPC's Vendor Performance Management policy.

Work is already underway for the 5<sup>th</sup> annual Diversifying the Federal Supply Chain Summit. The summit has evolved into a highly anticipated event that brings together hundreds of diverse and Indigenous businesses from across Canada and connects them with people and programs to assist them in obtaining federal contracts. It is a tangible way that OPO supports the Government of Canada's commitment to increasing the diversity of its supply chain and assisting diverse and Indigenous groups in overcoming systemic barriers. For the past 4 years this summit has been entirely funded out of OPO's original (2008) operating budget. A dedicated and secure source of funding would ensure the longevity of this critical activity.

We also look forward to continuing to conduct research on topics that are of importance to our stakeholders. OPO's KDS initiative was launched to better understand key issues in federal procurement, share knowledge, and provide meaningful guidance to suppliers and federal departments. The information that OPO gains through the conduct of these studies also helps to establish reasonable grounds to launch procurement practice reviews and conduct reviews of supplier complaints. Despite the importance of this activity to our stakeholders, the resources engaged in KDS are borrowed from other service areas, and subject to reallocation for

investigations and systemic reviews. OPO requires additional resources to maintain this important function.

Finally, OPO's operating budget has, over time, decreased by approximately \$350,000 since the office's inception in 2008, despite increased salary and operating costs (e.g. IT services) and the added responsibilities mentioned above. In order to ensure that OPO is adequately resourced to serve our stakeholders, the Procurement Ombud will be seeking an increase to the office's operating budget commensurate with the expanded services that the office provides.

# Appendix A — Statement of operations

Statement of operations for the year ended March 31, 2022

## 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.

## Parliamentary authority

The funding approved by the Treasury Board for the operation of OPO is part of Public Works and Government Services Canada's (PWGSC)<sup>2</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 and all other federal departments.

<sup>2</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.

# Statement of operations

EXPENSES	2021-22 (\$000)
Salaries and employee benefits	2,846
Professional services	108
Operating expenses	54
Information and communication	106
Materials and supplies	10
Corporate services provided by Public Services and Procurement Canada <sup>3</sup> (finance, human resources, information technology, other)	461
<b>TOTAL</b>	<b>3,585</b>

# Proactive disclosure

Compliance with the Treasury Board of Canada Secretariat and Public Services and Procurement Canada (PSPC) financial management policies requires the mandatory publication of the Procurement Ombudsman’s travel and hospitality expenses. It also requires disclosure of contracts entered into by OPO for amounts over \$10,000. Information on our proactive disclosures can be found by selecting the “Disclosure of Travel and Hospitality Expenses” link on PSPC’s “Transparency” webpage or on the “Open Canada” website by searching for “Procurement Ombudsman.” Disclosure of our contracts is published under PSPC as the organization.

<sup>3</sup> This collaboration 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 while respecting the independence of the office in delivering on its mandate.

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