



Office of the Procurement
Ombudsman

Bureau de l'ombudsman
de l'approvisionnement



Procurement Practice Review:

Review of the Procurement Management Control
Framework of the Courts Administration Service

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Canada 

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Introduction

Context

1. Paragraph 22.1(3)(a) of the *Department of Public Works and Government Services Act* provides the Procurement Ombudsman with the authority to review the procurement practices of departments to assess their fairness, openness and transparency.
2. As part of the annual planning process to develop the Office's Procurement Practice Review (PPR) Plan, the Office of the Procurement Ombudsman (OPO) assessed all issues brought to the Office's attention via procurement-related contacts. These contacts were assessed to determine whether they raised potential systemic issues or risks to fairness, openness or transparency.
3. OPO's analysis of these contacts identified potential issues linked to several aspects of the procurement process such as solicitation, bid evaluation and selection, unclear pricing and vendor performance.
4. The Courts Administration Service (CAS/the Department) was selected for this review based on potential issues raised to OPO's attention between 2013 and 2016, findings from a 2012-2013 CAS internal audit that identified opportunities for improvement with respect to procurement and contracting governance and internal controls, and the fact that OPO has never conducted a review of CAS' procurement practices.
5. Consequently, and as per subsection 4(1) of the *Procurement Ombudsman Regulations* (the Regulations), the Procurement Ombudsman determined there were reasonable grounds to review CAS' procurement management control framework (MCF).

Background

Procurement Management Control Framework

6. An MCF is a set of interrelated controls, procedures and systems designed to support management in its achievement of organizational objectives. A procurement MCF is an MCF designed to support the achievement of an organization's procurement-related objectives.
7. OPO developed a review program to assess organizations' procurement MCFs. The purpose of the program is to identify key risk and key control areas related to the procurement process that can impact fairness, openness and transparency in federal procurement.
8. OPO's procurement MCF reviews are designed to identify areas for improvement, make recommendations for change and highlight effective practices. These reviews support

organizations in their achievement of the following Treasury Board Contracting Policy (TBCP) objective:

... to acquire goods and services ... in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.

9. The components of a procurement MCF are designed and implemented by federal organizations to help manage the risks that may preclude the attainment of organizational objectives, including risks to the principles of fairness, openness and transparency. As such, procurement MCFs will differ by organization, depending on variables such as size, risk tolerance, and the volume, value and complexity of procurement activity. While the systems, processes and controls within the MCFs themselves will differ across organizations, the components should demonstrate the following:

MCF Components	Principles
Control Environment	<ul style="list-style-type: none"> • Values and ethics are promoted. • Oversight bodies are established and oversight is exercised regularly. • Authorities, roles and responsibilities are clearly identified, documented and communicated. • Management demonstrates a commitment to attracting, training and retaining competent staff.
Risk Assessment	<ul style="list-style-type: none"> • Objectives are sufficiently defined to enable the identification and assessment of risks. • A formal process is in place to identify, analyse and manage procurement risks, including fraud. • Planning exercises address risks and ensure procurement activity is aligned with objectives.
Control Activities	<ul style="list-style-type: none"> • Adequate controls, manual and/or automated, are in place to ensure risks are mitigated, and to support compliance with legislation, policies and organizational objectives. • Policies and procedures are clearly identified, documented and communicated.
Information and Communication	<ul style="list-style-type: none"> • Relevant, quality information is captured and used. • Information is reported internally and externally to inform management and stakeholders.
Monitoring Activities	<ul style="list-style-type: none"> • Procurement activity and information is monitored on a regular basis to ensure control activities are working as intended. • Deficiencies are reported to the responsible parties and corrective action is taken to ensure continuous improvement.

Courts Administration Service

10. CAS was established in 2003 by an Act of Parliament. CAS provides services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada. As described in the *Courts Administration Service Act*, CAS was established to:
- facilitate coordination and cooperation among the four courts for the purpose of ensuring the effective and efficient provision of administrative services;
 - enhance judicial independence by placing administrative services at arm's length from the Government of Canada and by affirming the roles of chief justices and judges in the management of the courts; and
 - enhance accountability for the use of public money in support of court administration while safeguarding the independence of the judiciary.
11. According to government-wide procurement data published by the Treasury Board Secretariat for 2016, CAS ranked 26th among 85 federal government organizations based on its volume of procurement transactions, and 39th based on dollar value. At CAS, in 2016, contracts valued at \$25,000 or less represented 96% of the organizations contract volume and 15% of contract value. Conversely, for the same period, contracts valued above \$25,000 represented 4% of contract volume and 85% of contract value. This meant the vast majority of CAS' contract spending was concentrated among a relatively small number of contracts. For comparison, across government 92% of contracts were at or below the \$25,000 threshold accounting for about 7% of total contract value.

2016 Procurement Activity		CAS	Government-wide
Contracts under \$25,000, including net amendments	Number	1152	315,335
	Value	\$1,891,000	\$1,203,269,000
Contracts \$25,000 and above, including net amendments	Number	50	28,126
	Value	\$10,362,000	\$17,004,529,000
Total	Number	1202	343,461
	Value	\$12,253,000	\$18,207,798,000

Source: Treasury Board Secretariat, 2016 Purchasing Activity Report

Review Objective and Lines of Enquiry

12. The objective of this review was to determine whether CAS has a procurement MCF in place, and if yes, whether it is functioning:
 - as intended and in a manner consistent with applicable sections of the *Financial Administration Act*, the regulations made under it, and the TBCP; and
 - in a manner that supports the principles of fairness, openness and transparency.

13. The objective was supported by the following lines of enquiry:
 - **Line of Enquiry 1:** To determine whether CAS has appropriate procedures, controls and systems regarding its procurement function and whether these are consistent with applicable legislation, policies, and the principles of fairness, openness and transparency. To this end, OPO reviewed the following components of CAS' procurement MCF:
 - Control Environment;
 - Risk Assessment;
 - Control Activities;
 - Information and Communication; and
 - Monitoring Activities.

 - **Line of Enquiry 2:** To determine whether procurement is conducted in compliance with the procurement MCF, the legislative framework, and supports the principles of fairness, openness and transparency. Specifically, OPO assessed whether:
 - Contract requirements are clearly defined;
 - Solicitation activities are consistent with applicable legislation, policies and processes;
 - Bid evaluation and selection activities are conducted in accordance with applicable legislation, policies and processes set out in the solicitation;
 - Amendments are authorized and administered appropriately; and
 - Procurement files are adequately documented to support decisions and actions.

Scope and Methodology

14. This review focused on the CAS procurement MCF and procurement activities from January 1, 2016 to June 30, 2017, and included contracts for goods and services where CAS was the contracting organization.

15. Acquisition card transactions, which do not typically involve processes such as bid solicitation and evaluation, were excluded from this review.

16. The review methodology included:

- review and analysis of documentation such as internal policies, guidelines, instructions, authority delegations, terms of reference and meeting minutes for the CAS Contract Review Committee;
- review and analysis of a sample of selected procurement files; and
- interviews with CAS staff.

17. For the review and analysis of CAS procurement files, OPO selected a sample of 30 files from the scope period. Of the selected sample, 15 were selected at random and 15 were selected judgmentally. Contract data used for sample selection was provided by CAS.

Why this is important

18. Having an effective procurement MCF in place and operating as intended is important for ensuring procurement is carried out in accordance with contracting requirements, mitigating risk, achieving best value and ensuring fairness, openness and transparency.
19. An effective procurement MCF can also help Deputy Heads in meeting their responsibilities as accounting officers set out in the *Financial Administration Act* (FAA).
20. Accounting officers have a legal obligation to appear before committees of the Senate and House of Commons and answer questions on the management responsibilities set out in section 16.4 of the FAA. The accounting officer is expected to be able to answer questions about how their departmental programs are delivered in compliance with administrative policies and procedures, such as the TBCP. Accounting officers are also required to answer questions regarding the steps taken to maintain effective systems of internal control. With respect to a department's procurement activities, this could entail discussion of the procurement MCF including controls in place, how they function, and the measures taken to ensure that they are effective.
21. Further, section 5.1.1 of the TBCP states federal organizations are responsible for ensuring "...adequate control frameworks for due diligence and effective stewardship of public funds are in place and working". All of the requirements from the Treasury Board frameworks, policies and directives cited in this report relate back to this overarching requirement from the Contracting Policy.

Observations

Line of Enquiry 1: To determine whether CAS has appropriate procedures, controls and systems regarding its procurement function and whether these are consistent with applicable legislation, policies, and the principles of fairness, openness and transparency.

Oversight provided by the Contract Review Committee

22. The TBCP sets out the Government's expectations for formal challenge mechanisms for proposed contracts and management oversight of the procurement function. Under section 11.1 of the TBCP, departments are encouraged to establish and maintain a formal challenge mechanism for all proposed contracts.
23. At CAS, a Contract Review Committee (CRC) provides oversight of the Department's procurement activities. The primary purpose of the Committee, as described in its Terms of Reference, is to ensure that CAS contracts are in accordance with the *Government Contracts Regulations* and TBCP. The CRC is charged with reviewing CAS' proposed contracts over \$10,000, excluding call-ups against standing offers, contracts against supply arrangements, and contracts issued by Public Services and Procurement Canada (PSPC) on behalf of CAS. For these exclusions, CAS has stated it relies on PSPC's integrity framework and internal review procedures.
24. Though not articulated in its Terms of Reference, OPO was advised the CRC also does not review contracts for legal services for reasons of solicitor-client privilege and the often sensitive nature of these contracts. Additionally, contracts for legal services are outside the CRC's mandate because they are not subject to the *Government Contracts Regulations* or the TBCP.
25. The CRC Terms of Reference, which had been in effect since August 2008, were updated in August 2017. The 2017 update was limited to increasing the dollar threshold for proposed contracts requiring CRC review from \$5,000 to \$10,000¹ and renewing the list of Committee members.
26. OPO found the Terms of Reference did not adequately describe roles and responsibilities of CRC members and did not accurately describe how the CRC functions. At some point prior to January 2016, the Committee moved from holding in-person meetings to review and discuss proposed contracts to a process whereby documents were sent to all CRC members by email. The sections of the Terms of Reference describing member roles and responsibilities, and meeting processes and procedures, were not updated to reflect these changes.

¹ CAS advised OPO that the dollar threshold for contracts requiring CRC review had been changed from \$5000 to \$10,000 prior to January 1, 2016 (the start of the review scope period).

27. As a supplement to the CRC Terms of Reference, CAS also provided OPO with a copy of a CRC “Members Toolkit”, dated May 2008, which included a checklist of items for members to consider as they review proposed contracts. OPO believes the Toolkit would be a useful tool to support the Committee’s work once updated to reflect current procurement rules and expectations of CRC members.
28. OPO attempted to determine CRC membership for the review scope period (January 1, 2016 – June 30, 2017); however, this proved to be challenging because a list of members had not been maintained. While the move away from in-person meetings was made to improve the efficiency of the review process, it also resulted in CRC meeting minutes no longer being taken.
29. OPO’s review of a sample of 30 CAS contracts included 14 that required CRC review. OPO confirmed 14/14 contracts which required CRC review were in fact reviewed. For the 3 contracts for which CAS issued a request for proposal (RFP), the CRC review occurred prior to issuing the RFP as well as prior to contract award. For the 9 contracts that required CRC review for which an RFP was not issued (e.g. non-competitive contracts above \$10,000), the CRC review occurred prior to contract award. Additionally, in the 2 instances when a contract with an original value below \$10,000 was amended to a value above that threshold, the CRC review occurred prior to issuing the amendment.
30. While OPO was able to confirm that CRC review had always occurred when required, the scope of the CRC review was not evident based on the file documentation. Contract files contained email responses from CRC members indicating they approved a proposed contract. However, the absence of CRC meeting minutes and the limited information provided in members’ email responses did not give a clear indication of what Committee members considered as they reviewed proposed contracts and amendments.

Commitment to values and ethics

31. Deputy Heads of federal government departments have specific responsibilities under the *Public Servants Disclosure Protection Act* (PSDPA), including establishing a code of conduct for their organization and an overall responsibility for fostering a positive culture of values and ethics in their organization. Departments have a responsibility to maintain the confidence of the vendor community and the Canadian public in the procurement system by conducting procurement in an accountable, ethical and transparent manner.
32. CAS has a documented Code of Conduct, which was approved by the Department’s Executive Committee in June 2014. The CAS Code of Conduct outlines the values and ethical standards to which all CAS employees are bound to adhere and which underlie the behaviours that are expected of them. A section of the Code of Conduct describes the ethical standards and expected behaviours of CAS employees specifically with respect to contracting and procurement activities. OPO was advised that all CAS

employees formally acknowledge and accept the values and ethics expectations by signing their letter of offer.

Draft departmental procurement guidance

33. CAS' procurement controls as well as the roles, responsibilities and accountabilities of CAS employees, managers and procurement officials have been documented in a draft departmental Procurement and Contracting Policy and draft Procurement and Contracting Guidelines. Although CAS' procurement processes and procedures generally followed these draft documents, they have never been approved or formally implemented.
34. The draft Procurement and Contracting Policy identifies the CAS Chief Administrator (i.e. Deputy Head) as being accountable for all procurement and contracting activities at CAS.
35. Departmental procurement and contracting services are provided centrally by the Contracting and Material Management Services (C&MM) unit of the CAS Corporate Services Branch. The draft policy identifies C&MM as being responsible for the overall procurement and contracting activities in the Department. Within this role, procurement officers in C&MM liaise with PSPC and Shared Services Canada, work with departmental responsibility centre (RC) managers to determine appropriate procurement strategies, and provide contract management assistance when required.
36. The draft policy and guidelines identify RC managers as being accountable for defining business requirements and for certifying that funds are available. They are also responsible for monitoring work performed under a contract and for certifying that services have been rendered or goods have been delivered in accordance with the contract.
37. Delegated authorities to enter into and sign contracts have been formally assigned through the CAS Delegation of Financial Authorities chart. In keeping with its centralized procurement model, full authorities have been assigned to the Director of C&MM and senior officials in the Corporate Services Branch. Authorities have also been delegated to various levels of management to be exercised within their own departmental units. For example, the positions of Registrar, Regional Director General, Director General, Executive Director and General Counsel have each been granted authority to enter into and sign contracts up to \$50,000 for competitive services and up to \$10,000 for goods and non-competitive services. These authorities can be exercised without the need to inform or involve C&MM. CAS noted the individuals exercising this authority are properly trained to do so and are accountable for following the procurement rules as per the approved delegation chart.
38. In the absence of formally approved procurement guidance that clearly defines CAS' procurement controls as well as roles, responsibilities and accountabilities, there is a risk

that the contracting process will not function as intended even though departmental officials are acting within their delegated authorities.

Mandatory procurement related training

39. Under the Treasury Board Directive on Performance Management, Deputy Heads or their delegates are responsible for providing employees with the tools, training and mentoring they need to meet the knowledge, skill, competency and engagement requirements to perform their duties. To assist employees in determining their learning needs, CAS has developed a guide, referred to as the “Learning Roadmaps”. This guide outlines the learning requirements for new employees, supervisors, and managers at all levels; as well as functional specialists, including procurement specialists.
40. Procurement-related training for CAS supervisors, managers, and executives primarily comes through mandatory Canada School of the Public Service (CSPS) authority delegation training courses. By completing these courses, employees receive information they need to successfully obtain and execute their delegated authorities. Topics covered include the management of human resources, finance, procurement, information, and related fields.
41. Required training for CAS procurement and material management specialists includes eight CSPS courses that focus on procurement, materiel management and the related topic of real property management. The procurement and material management courses range from basic to advanced and address the legal, regulatory and policy framework that governs procurement and material management in the federal government. Further, OPO was advised that individual learning plans are developed annually for all procurement and material management specialists and that completion of training is tracked through the government’s performance management process.

Procurement risk assessment

42. Under the Treasury Board Framework for the Management of Risk, Deputy Heads are responsible for managing their organization's risks by leading the implementation of effective risk management practices, both formal and informal. Effective risk management should support decision-making as well as the achievement of organizational objectives and outcomes, while maintaining public confidence.
43. Roles, responsibilities and accountabilities of RC managers and procurement officers are outlined in the draft CAS Procurement and Contracting Guidelines. The draft Guidelines indicate RC managers are responsible for identifying, and accountable for, project and business risks, while procurement officers are responsible for identifying, and accountable for, procurement risks. The document does not provide guidance on what is expected of RC managers and procurement officers in order to meet their responsibilities

and accountabilities. OPO's review included the process for assessing procurement risks and did not extend further into the processes for assessing project and business risks.

44. CAS procurement officers do complete a Request for Proposal (RFP)/Contract Checklist for procurements over \$10,000, which is provided to CRC members or senior management as applicable. While the checklist provides an indication that steps in the procurement process have been completed, it does not provide information about the underlying risks of a proposed contract and how those risks are being managed. Overall, OPO found the procurement risk assessment process to be more informal than formal and as such lacking with respect to documentation supporting the RFP/Contract checklists.
45. A clear, documented risk assessment process would provide the means to determine the risk profile of a proposed solicitation and inform the selection of appropriate procurement strategies. It would also provide key information to support the CRC in performing its oversight role.

Departmental procurement planning

46. The Treasury Board Secretariat's Management Accountability Framework (MAF) outlines the government's expectations for sound public sector management. In the area of financial management, the 2016-17 government-wide MAF report highlighted the importance of sound planning to support decision-making and manage risks. It noted that the effective management of public funds depends on the collection of reliable data and the availability of sound financial information for decision-making.
47. Similarly, CAS has recognized the value of procurement planning as a means to set out the Department's upcoming procurement priorities and allow for the proper planning and management of ongoing procurement and contracting activities. The draft CAS Procurement and Contracting Policy speaks of a departmental procurement plan that would be prepared by C&MM, presented to senior management, and updated semi-annually. Deviations from the plan would be reported to the CRC and CAS Executive Committee.
48. While the CRC and CAS senior management do receive information on individual planned procurements, a departmental procurement plan has not been created. Consequently, the CRC and senior management are not receiving departmental level procurement information that would be provided through status updates against the plan.

Public disclosure of contracts

49. Under the TBCP, Deputy Heads are required to publicly disclose contracts entered into or amendments valued at over \$10,000. This process, known as the proactive disclosure of contracts, reflects broader government commitments to transparency and strengthened accountability within the public sector.

50. OPO reviewed CAS' proactive disclosure reports for the period under review and found a significant number of omissions. Based on contract data supplied by CAS, OPO identified 179 contracts and amendments that were required to be made public pursuant to government proactive disclosure requirements. Of those, OPO found 41/179 (23%) had not been disclosed.
51. This result points to a limitation in CAS' procurement MCF, which if rectified, could ensure CAS achieves the government's commitment to strengthening transparency in the procurement process as a means for Canadians to hold their government to account.
52. OPO noted that government-wide changes to the process by which departments proactively disclose their contracts came into effect on January 1, 2018, after this review's scope period. As a result of these changes, government departments now disclose their contract data on the open government website, as opposed to publishing it on their own departmental web sites. Any adjustment to proactive disclosure controls at CAS would need to reflect this new process.

Monitoring of procurement activities

53. As stated in the TBCP, departments and agencies are responsible for ensuring "...adequate control frameworks for due diligence and effective stewardship of public funds are in place and working". Regular monitoring of procurement activities provides management the information to know if the procurement MCF is working, and the ability to take timely corrective action should deficiencies be identified.
54. The CAS procurement MCF includes monitoring activities that were not being performed during the period of OPO's review. As mentioned earlier, a CAS procurement plan had not been developed. Consequently, there had been no monitoring of the plan as envisioned in the draft CAS Procurement and Contracting Policy.
55. The CRC Terms of Reference also identify monitoring activities that were not being performed. OPO was advised the CAS Executive Committee was not provided with reports on the CRC's activities, and the CAS Internal Audit Division was not provided with CRC meeting minutes on a quarterly basis. Both activities are outlined in the CRC's Terms of Reference. On the latter point, meeting minutes were no longer kept; and no alternative monitoring control had been established.

Line of Enquiry 2: To determine whether procurement is conducted in compliance with the procurement MCF and legislative framework, and supports the principles of fairness, openness and transparency.

Definition of contract requirements

56. As required under section 4.1.2 of the TBCP “[w]ork descriptions or specifications must be defined in terms of clear outputs or performance requirements that will encourage and accommodate the use of the competitive process...” The CAS draft Procurement and Contracting Guidelines indicate the RC manager requesting a contract is responsible for defining their business requirements and drafting a statement of work. C&MM procurement officers provide advice to the RC manager as required and are responsible for reviewing the draft statement of work.
57. Through the review of a sample of 30 CAS procurement files, OPO sought to confirm that the need, i.e. the business requirements, had been identified, and the statement of work or requirements description clearly described the work to be carried out.
58. OPO found all 30 of the files reviewed had evidence of the need or business requirements having been identified.
59. With regard to service contracts, Section 16.1.2 and 16.1.3 of the TBCP describe the expectation of the statement of work: “The statement of work or requirements description should clearly describe the work to be carried out, the objectives to be attained and the time frame.” It also states “[t]he type, magnitude and complexity of the work will determine the degree of detail required.”
60. OPO found, excluding contracts for legal services, 21/24 files reviewed included an adequately defined statement of work, or were call-ups against standing offers which adequately described the work to be carried out. In the remaining three files the statement of work was not present. OPO noted these three files were for sole-source contracts with relatively simple requirements and original dollar values under \$10,000.

Consistency of solicitation activities with applicable legislation and the TBCP

61. As required by section 5 of the *Government Contracts Regulations*, departments are to solicit bids before any contract is entered into. Because it is not always possible, practical, or cost effective to seek bids for every proposed contract, section 6 of the *Government Contracts Regulations* permits certain exceptions.
62. Further direction regarding solicitation activities is provided by the TBCP. Section 2(a) of the TBCP requires that “[g]overnment contracting shall be conducted in a manner that will stand the test of public scrutiny in matters of prudence and probity...” Section 4.1.3 of the TBCP also states “[w]henever practical, an equal opportunity must be provided for all firms and individuals to compete provided that they have, in the judgement of the

contracting authority, the technical, financial and managerial competence to discharge the contract...”

63. The draft CAS Procurement and Contracting Policy describes best practices and guiding principles which are consistent with the requirements stated above. This draft policy states the Department “uses an open, transparent, and competitive process that respects accountability, fairness and integrity with the aim to achieve overall best value” and encourages the use of competitive procurement strategies. It indicates, when possible, multiple quotes are to be sought when a requirement exceeds \$5000.
64. Of the 30 files reviewed by OPO, 2 were for contracts that followed open competitive procurement strategies and were posted publicly on the government electronic tendering service (GETS). Additionally, 9 contracts were issued under a PSPC standing offer or supply arrangement. In all 9 of these contracts, OPO found CAS had followed the terms and conditions of the applicable standing offer or supply arrangement.
65. Six of the 30 files reviewed by OPO were contracts for legal services for which the *Government Contracts Regulations* and the TBCP do not apply. For these contracts there are no requirements to solicit bids; however, CAS encourages competition for legal services contracts where feasible. OPO noted CAS sought multiple bids for two of the six contracts for legal services.
66. The remaining 13 files were for contracts that followed limited or non-competitive strategies.
67. OPO found a non-competitive procurement strategy was permissible for 10/13 files based on provisions in section 6 of the *Government Contracts Regulations*. These were primarily contracts under \$25,000 in value.
68. The remaining 3 files were for court usher services. Court ushers are present in court rooms to assist the presiding judge and to maintain decorum during proceedings. Each of these contracts was issued on a sole-source basis to an individual who had an expiring contract with CAS for the same service. Two of these contracts had a duration of two years, while the third contract had a duration of two years and nine months. The value of each contract was set at \$25,000.
69. During the scope period there were 35 of these contracts in effect. OPO found the vast majority of contracts for court usher services were sole-sourced \$25,000 contracts. Many were reissued to the same supplier without competition, like the three in OPO’s sample.
70. Court usher services is an example of the type of requirement for which government departments must weigh the costs and benefits of conducting competitive versus non-competitive procurement processes. CAS has stated, while competition is the norm, a

competitive procurement strategy for court usher contracts was not pursued because it would not have been economical or efficient to do so. OPO recognizes the challenges CAS faces with respect to contracts for court usher services. However, OPO encourages the Department to consider competitive procurement strategies for acquiring these services as existing contracts expire, in instances where the need is ongoing and consistent. Conducting competitive processes in such instances would ensure fairness, openness and transparency for court usher contracts but would still enable flexibility and economic efficiency if/when these factors were not present.

71. OPO also reviewed the sample files to determine if CAS had responded appropriately to questions submitted by suppliers during the solicitation period. Of the 30 files reviewed, 4 showed that questions had been received from potential bidders.
 - In 2 files, CAS provided responses to all potential bidders by posting an amendment to GETS;
 - In 1 file, documentation indicated responses were emailed to all potential bidders invited to bid under a supply arrangement; and
 - In 1 file, there was a question and a response, however, OPO was unable to confirm if the Department's response had been sent.

Consistency of bid evaluation and selection activities with applicable legislation, the TBCP and processes set out in solicitations

72. The TBCP establishes the framework within which contracting authorities must be exercised, including specific sections pertaining to the evaluation of bids. Section 10.7.27 of the TBCP states “[t]he principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative.”
73. Of the 30 files reviewed, 5 were solicitations for which CAS established bid evaluation criteria. For 4/5 of these solicitations, bid criteria and selection plans were clear and not restrictive or excessive. However, in one of those files, a \$2,000,000 contract, OPO found the successful supplier had not been selected in accordance with the selection plan described in the solicitation. In this instance, the solicitation document indicated the basis of selection as highest combined rating of technical merit (70%) and price (30%). When CAS scored proposals it did so based on a ratio of 60% technical merit and 40% price. OPO noted that despite this discrepancy, the contract would have been awarded to the same supplier had CAS applied the proper 70/30 ratio.
74. The one remaining file had clear bid criteria and a selection plan; however, it was not evident through file documentation how CAS procurement officials had responded to CRC members' comments about overly restrictive criteria in the proposed solicitation. The CRC had expressed concern that the stringent requirements may limit the number of responses. CAS advised OPO that the CRC's comments were answered verbally by

providing additional context related to the contract. In this instance the solicitation was sent to seven potential suppliers and one proposal was received.

Authorization and administration of contract amendments

75. Under section 12.9 of the TBCP, contract amendments are permissible. However, amendments should not be used unless they are in the best interest of the government. Further, contract amendments should be made with the same care that went into the original contract.
76. Of the 30 files reviewed, 16 had at least one amendment. For the majority of those files, amendments had been appropriately authorized, with justification for increased funds where applicable. In one file there was no documented justification for increased funds. OPO was advised the justification was not documented in the file due to the sensitivity of the contract in question. In the one remaining file, OPO found the contract had expired before the amendment was signed. The amendment was to exercise an option year to extend the contract period. CAS advised OPO this was caused by an administrative error. Better information and monitoring activities could have enabled CAS to amend this contract before it expired.
77. Additionally, one file stood out due to the dollar value of its amendments. The contract in question had been issued for \$2,000,000 and was subsequently amended three times, increasing its value by over \$600,000. While these amendments were properly authorized, they were performed despite assurances provided by C&MM when the original contract was approved that its value would not be amended upwards. The amendments became necessary to meet operational requirements because a new contract to replace the existing one had not been established in time. OPO was advised the new contract was delayed due to the departure of key officials. This highlights the value of having a resilient procurement MCF with components that continue to function when faced with challenges such as the departure of key officials.

Procurement file documentation

78. The TBCP requires procurement files to be established and structured to facilitate management oversight with a complete audit trail that contains contracting details related to relevant communications and decisions including the identification of involved officials and contracting approval authorities.
79. Overall, OPO found CAS procurement files to be adequately documented. Deficiencies in individual files generally related to a lack of support for contract security decisions. For example, in files for paper shredding services OPO could not locate a Security Requirements Check List (SRCL). An SRCL is a form completed by government departments to describe security requirements for a proposed contract.

80. Regarding contracts for legal services, OPO acknowledges there are unique challenges with respect to documenting decisions made and actions taken, for reasons such as “solicitor-client privilege”. For all such contracts, CAS requires documented justification, which is approved by the Deputy Chief Administrator and retained in the contract file. OPO believes documenting the justification for contracting for legal services in advance of the contract being issued, or any work being performed, to be a good practice and should be continued for all legal services contracts issued by CAS.

Conclusion

81. OPO determined that CAS has a procurement MCF in place. For the most part the procurement MCF was functioning as intended and in a manner consistent with applicable authorities. The review, however, identified components of the CAS procurement MCF that could be strengthened to mitigate potential risks to fairness, openness and transparency.
82. The CAS procurement MCF benefits from the Department’s demonstrated commitment to values and ethics and its support for employees’ participation in procurement related training. Oversight provided by the CRC provides a formal challenge function; however, clarity is required regarding the responsibilities of Committee members and how the Committee operates.
83. Procurement controls, as well as roles, responsibilities and accountabilities have been documented in draft form. Given the volume and complexity of procurement at CAS, the Department would be well-served to formally approve and implement departmental procurement procedures and guidelines.
84. CAS relies mainly on informal risk assessment processes which provided limited information regarding a proposed procurement’s risk profile. Improved documentation of the procurement risk assessment process and results would better inform the selection of appropriate procurement strategies and support the CRC in fulfilling its oversight role.
85. Finally, while information is communicated within the Department regarding individual procurements, information on the procurement function overall was found to be lacking. This showed itself in the absence of a departmental procurement plan and subsequent department-level monitoring of procurement activities. It was also made evident by the large number of contracts that were not publicly disclosed as required.

Recommendations

86. The Procurement Ombudsman recommends that CAS:
 - Amend the Contract Review Committee’s Terms of Reference to clearly describe the Committee’s role, responsibilities of members, membership, and processes

and procedures, including the methods by which the Committee will report to Senior Management on its activities and results.

- Formally document, approve and implement departmental procurement guidance, including procedures and guidelines. Consideration should also be given to documenting the process and controls for contracting for legal services.
- Document the process for assessing procurement risk and the use of risk information to support decision making.
- Develop, implement and maintain a departmental procurement plan.
- Establish formal documented mechanisms for monitoring procurement activities.
- Review controls in place to ensure proper disclosure of contracts under the Treasury Board Secretariat Guidelines on the Proactive Disclosure of Contracts, which came into effect January 1, 2018.

Departmental Response

87. In accordance with section 5 of the Regulations, the Procurement Ombudsman provided CAS with the opportunity to comment on the proposed recommendations of this review and the reasons for them. CAS was also given the opportunity to comment on the findings of the review, and comments were taken into consideration prior to the report being finalized and published. The following response and action plan for each recommendation was provided by CAS.
88. Courts Administration Service's response: The Courts Administration Service is in agreement with the recommendations of this report. The department will take the steps necessary to implement the recommendations of this report.
- Amend the Contract Review Committee's Terms of Reference to clearly describe the Committee's role, responsibilities of members, membership, and processes and procedures, including the methods by which the Committee will report to Senior Management on its activities and results.
 - We agree. The Contract Review Committee terms of reference were modified and approved by senior management on August 28, 2018. Implementation and communication will be initiated in September 2018.

- Formally document, approve and implement departmental procurement guidance, including procedures and guidelines. Consideration should also be given to documenting the process and controls for contracting for legal services.
 - CAS follows the Treasury Board procurement and contracting policy framework. We agree that procedures and guidelines currently in draft form require review and formal approval, including incorporating procedures and controls related to contracts for legal services. Formally approved procedures and guidelines will be in place by March 2019.
- Document the process for assessing procurement risk and the use of risk information to support decision making.
 - We agree. The processes over procurement risk assessment will be formalized and communicated to procurement officers and the Contract Review Committee by September 30, 2018.
- Develop, implement and maintain a departmental procurement plan.
 - We agree. The procurement plan was initiated in May 2018 as part of the Budget 2018-2019 exercise. The risk-based analysis of procurement and contracting will be presented twice a year to senior management starting October 2018.
- Establish formal documented mechanisms for monitoring procurement activities.
 - We agree. The documentation of procurement activities monitoring will be integrated into the procedures and guidelines being formalized by March 2019.
- Review controls in place to ensure proper disclosure of contracts under the Treasury Board Secretariat Guidelines on the Proactive Disclosure of Contracts, which came into effect January 1, 2018.
 - We agree. The review of controls in place to ensure proper disclosure of contracts was initiated and will be presented to senior management in September 2018. The related controls will be included in the procedures and guidelines being formalized by March 2019.
 - The contracts missing on the Proactive Disclosure Website were posted on August 31, 2018.