Office of the Procurement Ombudsman

Bureau de l'ombudsman de l'approvisionnement

Procurement Practice Review:

Follow-up Report on the 2014-2015 Procurement Practice Review "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements"

March 2018

Canada

Table of Contents

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

2

Main Points

What We Reviewed

1. In 2014-2015, the Office of the Procurement Ombudsman (OPO) conducted a procurement practice review entitled *Review of Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements.*

2. Five federal organizations were included in the scope of the original review: Health Canada (HC), Public Health Agency of Canada (PHAC), Global Affairs Canada (GAC), Correctional Service Canada (CSC), and Public Services and Procurement Canada (PSPC).[1]

3. PSPC was included solely because it is responsible for the establishment of mandatory standing offers (SOs) and supply arrangements (SAs), and OPO wanted to understand how PSPC used feedback to improve SO and SA tools. Files for contracts issued by PSPC were excluded from the scope of the original review. The Procurement Ombudsman's recommendations were addressed to three organizations: HC, PHAC, and GAC.

4. In July 2017, OPO asked these three organizations to provide information regarding actions taken in response to the recommendations made in the above-noted review.

5. The purpose of the follow-up exercise was to determine whether the organizations considered and took action, or developed plans, in response to the Procurement Ombudsman's recommendations. In this regard, OPO assessed the information provided by the organizations for overall reasonableness and credibility. This report provides a summary, as well as specific examples, of progress made by the organizations in implementing the recommendations in the original review.

Why It's Important

6. There are three main reasons why reporting on progress made in response to the Procurement Ombudsman's recommendations is important. First, it informs interested stakeholders of specific actions organizations have taken to improve procurement practices. Second, by sharing information on changes being implemented by the organizations whose practices were reviewed, OPO facilitates other federal organizations' ability to introduce similar improvements. Lastly, the information on the nature and extent of responses to the recommendations provides an indication of the usefulness of OPO's reviews in promoting fairness, openness and transparency in federal procurement.

---

[1] At the time of the original review Global Affairs Canada (GAC) was known as the Department of Foreign Affairs and Development (DFATD), and Public Services and Procurement Canada (PSPC) was known as Public Works and Government Services Canada (PWGSC).

What We Found

7.   All three organizations stated they took action in response to the recommendations made in the original review including: creating documentation standards for SO and SA procurement files, and implementing risk-based monitoring of SOs and SAs. Using a scale provided by OPO[2], the organizations self-assessed the level of implementation of these actions as "full implementation" (Level 5), with one exception which was self-assessed as "planning stage" (Level 2)[3]. When asked for documentation to substantiate these assertions, the organizations provided OPO with supporting documentation for each action.

Introduction

8.   OPO published the following report in October 2015:

- Review of Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

Objectives

9.   The objectives of this follow-up review were to determine:

- Whether the organizations considered the recommendations made by the Procurement Ombudsman in the October 2015 review with respect to their procurement practices;

- Whether action plans to respond to the recommendations were prepared and approved; and,

- What actions were undertaken in response to the recommendations, and the extent to which each action had been monitored and completed.

10.   OPO expected the three organizations to have introduced changes to improve their procurement practices in response to the Procurement Ombudsman's recommendations.

Scope, Methodology and Timing

11.   OPO requested HC, PHAC, and GAC provide information on actions planned or implemented as a result of the recommendations from the original (i.e. October 2015) review. This report reflects actions reported to OPO by the three organizations.

---

[2] The OPO scale for implementation levels was: Level 1 – No progress or insignificant progress; Level 2 – Planning stage; Level 3 – Preparations for implementation; Level 4 – Substantial implementation; Level 5 – Full implementation; Obsolete – Recommendation no longer applicable.

[3] In keeping with standard operating procedures, OPO provided implicated organizations an opportunity to review and comment on a draft version of this report. During the report clearance process, GAC provided additional information and documentation to demonstrate one of its actions, which it had assessed at the "planning stage", had been implemented.

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

4

12. The approach OPO uses for follow-up exercises differs from the approach used in OPO's procurement practice reviews. The assessment of progress made against recommendations was based upon the organizations' self-assessments and assertions regarding their plans and actions coupled with supporting (i.e. substantiating) documentation. For each recommendation in the original review, OPO reviewed the information provided for overall reasonableness and credibility. This was done by:

   - Verifying whether any contradiction existed between the organizations' assertions and information available from publicly accessible sources or obtained during the original review;

   - Analyzing the organizations' responses to understand how their actions addressed the recommendations and whether there were plans to monitor the results or effectiveness of these actions or changes; and,

   - Seeking clarification, as required, to ensure a clear understanding of the information and supporting documentation provided by the organizations.

13. This report provides an overview of each organizations' assertions, as well as OPO's assessment, on progress in implementing changes in response to the recommendations contained in the original review.

Assessment of Implementation of the Organizations' Actions

Summary of Original Review Findings

14. The original review included five organizations (CSC, HC, PHAC, GAC, and PSPC) and examined the following five areas: training; policies and guidance; consistency of contracts issued against SOs/SAs with applicable rules; monitoring of contracts issued against SOs/SAs; and use of feedback mechanisms to improve SOs/SAs. The original review's finding for each of these areas are summarized below.

15. The original review had found that, generally speaking, training regarding SOs and SAs was included in general procurement training material; OPO noted, however, that training for each tool was not always available and often not mandatory.

16. All organizations had established general procurement policies or guidelines, and staff in these organizations had indicated that both the Treasury Board Contracting Policy and the PSPC Supply Manual were often referred to as general external guidance. In addition, GAC had created specific guidelines for frequently used SOs/SAs that it had established.

17. In order to assess the consistency of contracts issued against SOs/SAs with applicable rules, OPO had examined a judgmental sample of files. The original review had found, apart from CSC whose files were more consistently in line with the requirements of the Treasury Board Contracting Policy, inconsistencies with this Policy. The original review noted, for the four organizations whose contract files had been reviewed (i.e. CSC, HC, PHAC and GAC), the following inconsistencies:

- In 7% of files reviewed, contracting procedures specified in the SO or SA were not followed.

- In 18% of files, documentation indicated that work was performed outside of the contract start or end date.

- Of the files that required a statement of work, 8% did not have one on file or did not contain specific deliverables and tasks with associated timelines.

- Prices were found to be inconsistent with the prices established in the SO in 8% of files reviewed, and in 25% of files OPO was unable to determine if prices had been consistent.

- In many instances where regret letters should have been sent to unsuccessful bidders, none were found on file.

18. Regarding monitoring of contracts issued against SOs and SAs, the original review had found that, other than CSC, organizations were unable to provide sufficient evidence that regular monitoring of contracts issued against an SO or SA was occurring. While numerous procurement monitoring activities had been occurring at the organizations reviewed, a systematic, risk-based approach to assessing the compliance of contracts issued against an SO or SA with procedures identified in each tool had not been implemented.

19. With respect to feedback mechanisms used to improve SOs and SAs, all organizations reviewed had mechanisms to obtain feedback from stakeholders and to consider, communicate, and integrate it within their tools.

Original Review Conclusion

20. The original review had concluded:

- While general procurement training existed and included some information regarding SOs and SAs, training was not available or mandatory for all tools.

- Of the 92 contracts examined by OPO, 47% contained critical errors, which prevented OPO from determining whether the SO or SA was being used as intended. Critical errors were defined by OPO as an inconsistency with the *Financial Administration Act* or any regulations made under it, the Treasury Board Contracting Policy, and the rules of use for each tool. A large number of critical were due to poor documentation.

- With the exception of CSC, organizations had little, to no, monitoring of contracts issued against SOs and SAs. The lack of monitoring of contracts issued against SOs and SAs raised questions as to whether the use of these tools was receiving the appropriate amount of oversight.

21. The Procurement Ombudsman recommended that GAC, HC and PHAC implement measures to ensure:

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

6

1. Documentation requirements regarding SO and SA procurement files are adhered to; and
2. Risk-based monitoring of SO and SA procurement files regularly occurs commensurate with senior management-sanctioned risk-tolerances.

22. Recommendations were not directed to CSC given its files had the lowest error rate in OPO's file review and the organization had a strong control framework in place, including the monitoring of contracts issued against SOs and SAs. Recommendations were not directed at PSPC because, as noted above, it was involved solely as the administrator of government-wide SO and SA tools.

Summary of Organizations' Responses to Follow-up

23. All three organizations (HC, PHAC and GAC) stated they had taken action on the recommendations made in the original review, and initial responses indicated that all but one of these actions had been fully implemented[4]. The organizations provided substantiating documentation for the actions. For the purposes of this report, as both HC and PHAC are part of the same portfolio and provided identical responses, their actions are reported as one.[5]

Response to Recommendation 1

24. In response to the Procurement Ombudsman's first recommendation, HC/PHAC stated it had implemented four actions to ensure documentation requirements regarding SO and SA procurement files were adhered to.

25. First, HC/PHAC developed a sampling methodology for monitoring, and tools which outline the information required on file, for various procurements including SOs and SAs. Second, pilot testing was conducted to test the methodology and tools in November 2015. HC/PHAC stated that results showed improvements to SO/SA file documentation. Third, HC/PHAC stated it had updated its procurement intranet site to include file documentation requirements for all procurement transactions. Finally, a checklist was developed for procurement staff with the authority to approve contracts to assist in reviewing contracts under $10,000 and for documenting contracts greater than $10,000. Usage of this checklist was initiated in May 2016.

26. In response to the Procurement Ombudsman's first recommendation, GAC stated it had undertaken four actions to implement measures to ensure documentation requirements regarding SO and SA procurement files were adhered to.

27. First, its procurement guidelines and checklists were updated to address the recommendation. Second, GAC stated it continued to conduct procurement training

---

[4] During the report clearance process, GAC provided additional information and documentation to demonstrate one of its actions, which it had assessed at the "planning stage", had been implemented.
[5] At the time of the original review, the contracting units of Health Canada and the Public Health Agency of Canada operated separately; they have since amalgamated.

sessions within headquarters and abroad to ensure individuals involved in contracting were familiar with the cadre of tools and templates available on the intranet. Third, GAC stated that it centralized the responsibility for 'Development' (i.e. initiatives outside of Canada) SO and SA procurement files within the organization. Finally, GAC stated that a customized risk-based checklist for 'Development' requirements under organizational SAs was approved and has been used by procurement staff since January 1, 2017.

Response to Recommendation 2

28. In response to the Procurement Ombudsman's second recommendation, the organizations identified actions taken to monitor SOs and SAs.

29. HC/PHAC stated it implemented one action to ensure risk-based monitoring of SO and SA procurement files occurred regularly. Since November 2016, it had implemented a monthly monitoring and quality assurance review, which was performed on all procurement files including those from SOs and SAs.

30. GAC stated it had taken two actions. The first was the drafting of a strengthened risk-based compliance and oversight regime for its 'Domestic' (i.e. within Canada) contracting, which was partially approved. Final approval and implementation was expected in late 2017, which was expected to coincide with the timeframe for the completion of organizational changes to its procurement groups.[6]

31. For the second action, GAC stated a risk-based monitoring approach was developed, approved and fully implemented for 'Development' contracting. GAC also stated that a monitoring exercise of contracts from April 1, 2015 to March 31, 2016 was conducted by the organization in mid-2017. Additionally, the organization indicated the Grants and Contributions Financial Policy Division planned to conduct similar monitoring annually using the risk-based checklist developed for SAs.

Assessment of Responses

32. HC/PHAC and GAC stated they implemented actions to respond to the Procurement Ombudsman's two recommendations in the original review. All actions, with one exception, were reported by the organizations as being fully implemented. The organizations provided documentation to substantiate the actions taken.

Assessment of Recommendation 1

33. HC/PHAC stated it had fully implemented four actions to respond to the Procurement Ombudsman's first recommendation and provided documentation to support its assertion.

---

[6] During the report clearance process, GAC provided an approved version of the policy, dated November 2017. The Department also stated the implementation date for organizational changes to its procurement groups was changed from "late 2017" to April 2018.

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

8

34. First, HC/PHAC provided a copy of its sampling methodology and tools outlining the documentation requirements for the various contracting types. Second, it provided documentation demonstrating pilot testing was performed using the methodology and tools, and findings were shared with senior management. Third, HC/PHAC provided a copy of its file documentation requirements that it indicated was uploaded to its intranet site. Finally, HC/PHAC provided a checklist to assist procurement personnel with the review of contracts.

35. GAC stated it had fully implemented four actions to respond to the Procurement Ombudsman's first recommendation. The Department provided documentation to support three of these actions.

36. First, the Department provided a copy of its Business Management Office checklist used to ensure procurement processes are adhered to. Second, the Department stated procurement training sessions were given at headquarters and abroad. During the report clearance process, the Department explained SO and SA procurement tools used in Canada were, with few exceptions, implemented and maintained by PSPC, which provided mandatory training to access and use these tools. Additional training or support provided within GAC was not designed to specifically address SO and SA tools, and not considered by the Department to be formal training nor tracked for reporting purposes. OPO could not determine to what extent this training responded to the Ombudsman's recommendation. Third, it indicated requirements for 'Development' SOs and SAs were centralized and provided documentation to that effect. Fourth, the Department provided a copy of its competitive contract checklist for SAs as evidence of a risk-based checklist for 'Development' SAs.

Assessment of Recommendation 2

37. HC/PHAC stated it implemented one action in response to the Procurement Ombudsman's second recommendation. The organizations provided a sample report to show that monitoring of SO and SA procurement files was occurring.

38. GAC stated it implemented two actions in response to the second recommendation. Regarding the first action, GAC provided OPO with a copy of its draft Policy on Compliance and Oversight. The Department had originally self-assessed the first action as being in the planning stage given the draft policy for 'Domestic' contracting was partially approved at the time of this follow-up exercise. During the report clearance process, GAC provided documentation to demonstrate the policy had been approved.

39. Regarding the second action, GAC stated a risk-based monitoring approach was approved and fully implemented for 'Development' contracting SAs. The Department provided a sample report to show that monitoring of these contracts was occurring.

Conclusion

40. The organizations considered the Procurement Ombudsman's recommendations from the original procurement practice review and provided information on their respective plans and actions.

41. HC/PHAC stated that all actions were fully implemented, and provided documentation to substantiate this assertion. OPO noted that many of the actions were implemented well in advance of this follow-up exercise.

42. GAC originally stated that, with one exception, its actions were fully implemented. During the report clearance process, GAC provided documentation to demonstrate the one exception had been implemented. OPO therefore noted that all actions had been implemented by GAC.

43. Overall, OPO's analysis found the three organizations' responses (i.e the self-assessments and the substantiating documentation) to be reasonable and credible.

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

10

Annex A – OPO Recommendations and the Departments' Responses

OPO Recommendations	Departments' Initial Responses
The Procurement Ombudsman recommended that DFATD, HC and PHAC implement measures to ensure: 1. Documentation require ments regarding SO and SA procurement files are adhered to; and	**HC/PHAC** • HC/PHAC have developed a sampling methodology and tools outlining the information requirements considering the various contracting types (including SO and SA). • HC/PHAC conducted a pilot testing of methodology and tools in November 2015 with an end goal of implementing an ongoing review process. Findings were presented to Senior Management for review and acceptance. • HC/PHAC Procurement Intranet site was updated to include file documentation requirements for all procurement transactions. This information was also used to develop the Quality Assurance methodology. • A checklist was developed to assist PGs with the review of contracts <$10[000] and for documentation of contracts 1>$10[000] approved by the PG. Usage of this checklist was initiated in May 2016. **GAC (DFATD)** • Procurement guidelines and checklists have been updated to address recommendations. • Continued procurement training sessions both within HQ and abroad to ensure that the individuals involved in contracting are familiar with the cadre of tools and templates available on the intranet. The Grants and Contributions Management Bureau (SGD) has centralized the responsibility for Development Standing Offers (SO) and Supply Arrangements (SA) procurement files. • A customized risk-based checklist for Development requirements under departmental SAs has been elaborated and approved and is now being used by Contracting Officers
The Procurement Ombudsman recommended that DFATD, HC and PHAC implement measures to ensure: 2. Risk based monitoring of SOs and SAs procurement files regularly occurs commensurate with senior-management sanctioned risk-tolerances.	**HC/PHAC** • An on-going monitoring and quality assurance review is performed on all procurement files (including SO and SA files) - November 2016 and ongoing. **GAC (DFATD)** • Strengthened Risk Based Compliance and Oversight regime partially approved and implemented. Further approvals and implementations are expected in the second half of FY 2017-18. **Actions include:** Domestic Contracting: A strengthened risk based Compliance and Oversight regime has been drafted and partially approved. Final approval and implementation is expected later in FY 2017-18 once Procurement organizational changes are complete. Development Contracting A risk-based monitoring approach has been developed, approved and implemented. The Grants and Contributions Financial Policy Division (SGP) plans to conduct annually monitoring activity on Development Supply

	Arrangements using the risk-based checklist developed. The first monitoring activity occurred in Q4 of 2016/2017.

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices Regarding Standing Offers and Supply Arrangements

12

Annex B

OPO Recommendations	Additional information provided during the report clearance process
The Procurement Ombudsman recommended that DFATD, HC and PHAC implement measures to ensure: 1. Documentation requirements regarding SO and SA procurement files are adhered to; and	GAC (DFATD) Other than the Standing Offers and Supply Arrangements identified under 'Development' below, the Procurement tools used by GAC in Canada, with few exceptions, are implemented and maintained by PSPC who provide the <u>mandatory training required for access.</u> The additional training/support provided by GAC is not a formal training process (not tracked for reporting purposes) and is not designed specifically to address these SO/SA tools as this is done through PSPC. The GAC training sessions are typically informal and delivered to small groups of procurement stakeholders which can consist of occasional users, such as those in the many Business Management Offices, or to the more skilled users in the Procurement Centres of Expertise (CoE). Standing Offers used at missions abroad are generally created with the assistance of the HQ CoEs and generally have low dollar value call-up limits. Training on their use forms part of the general Procurement training provided to both Canada Based and Locally Engaged Staff involved in mission procurement. Supply arrangements are generally not used by missions. Reporting to the Director of Development Contracting Services (SGC), the Standing Offers, Supply Arrangements and Low Dollar Value Contract unit (commonly referred to using SGCP symbol) is responsible for the procurement files related to standing offers and supply arrangements. More precisely this unit is namely responsible for the following categories of procurement: • Development Contracts under $500,000; • Establishing GAC supply arrangements for the development stream; • All development contracts resulting from GAC supply arrangements; • Development contracts resulting from GAC standing offers (if any); • Development contracts using PSPC tools; • Providing advice and oversight to overseas missions on development contracting under $500,000. The supporting documents related to the organizational structure and SGCP responsibilities are attached in Annex 1 and are the following: a. Organizational Chart… b. Description of Key Functions - GCCMD Business Centres c. Contracting Services New Delivery Model d. Grants and Contributions Management Bureau (SGD) Business Centre and Contracts Departmental business processes and related tools repository (Modus) also confirms the aforementioned structure. Modus is a departmental intranet web application that hosts the business processes and related tools which includes a landing page on Supply Arrangements in support to projects/programs (G&C). This landing page provides clear instructions on the purpose and the steps to be followed by Program and Contracting Officers (refer to Annex 2).

The Procurement Ombudsman recommended that DFATD, HC and PHAC implement measures to ensure: 2. Risk based monitoring of SOs and SAs procurement files regularly occurs commensurate with senior-management sanctioned risk-tolerances.	GAC (DFATD) The Policy on Compliance Monitoring and Oversight (Annex 3) was signed off by the CFO November 1st, 2017 and is posted on GAC's Procurement and Materiel Management website. Note that the *"organizational changes to its procurement Groups"* reference… which was to have taken place in *"late 2017"* was extended to April 2018.

Follow-up Report on the 2014-2015 Procurement Practice Review: "Government Wide Procurement Practices
Regarding Standing Offers and Supply Arrangements

14