



TIME FOR ACTION



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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 Ombud's Annual Report for the period of April 1, 2023 to March 31, 2024.

Yours sincerely,

Alexander Jeglic
Procurement Ombud's
July 2024

1 > Office of the Procurement Ombud

Our mission

To promote fairness, openness and transparency in federal procurement.

The Procurement Ombud's mandate

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

- Review supplier complaints about the award of certain federal contracts below \$33,400 (for goods) and \$133,800 (for services)
- Review supplier complaints about the administration of certain federal contracts, regardless of dollar value
- Review the procurement practices of federal departments to assess fairness, openness and transparency, and make recommendations for improvement
- Provide dispute resolution (e.g., mediation) services for the parties to a federal contract

Who we are

Headquartered in Ottawa, the Office of the Procurement Ombud (OPO) is comprised of 31 employees representing diverse backgrounds and cultures. In 2020-2021, OPO committed to a diversity target of 50% female and 30% diverse workforce within 5 years. At the end of the fiscal year, of those who chose to identify, OPO had a 68% female and 36% diverse workforce.

2 > Message from the Procurement Ombud



It is a pleasure to submit my seventh annual report. This report represents a summary of the activities undertaken by my Office in the 2023-24 fiscal year. I remain dedicated to the 4 priorities established under my previous mandate—Simplification; Transparency; Alternative Dispute Resolution and Knowledge Deepening and Sharing. In addition to these priorities, my Office's long standing commitment to diversity and inclusion has been formally captured as a priority.

The theme for this year's annual report is *Time for Action*. There is no sugarcoating the fact that changes are needed. This year the need for change was further

recognized by Parliamentarians, and most importantly Canadian taxpayers. Recent reviews on government procurement practices have further exposed many of the long standing problems my Office has been highlighting year after year. It is time to start to address these issues directly to make sure they do not impact our future the way they have impacted our past.

The Issues

The long standing procurement issues listed below are best highlighted through the core procurement principles of fairness, openness, and transparency.

Fairness

The principle of fairness in public procurement encompasses the consistent application of procedural rules and the equitable treatment of bidders. These rules are designed to ensure that decisions are made by impartial actors and based on relevant information.

- Favoritism towards a specific bidder or bidders can manifest in overly restrictive selection criteria, selecting a procurement method based on a desire to benefit a specific supplier, or not following the prescribed evaluation methodology. This can lead to unfair advantages for certain suppliers, compromising the integrity of the procurement process. Further, some procurement processes are starting out with a preference for a specific supplier. This can never be the starting point, as it undermines the core tenets of procurement. The starting point must be based on the core business need, i.e, the operational requirement, of the department.

Openness

Openness ensures that all eligible suppliers have an opportunity to participate in a procurement process.

- The complexity of federal procurement can result in a lack of competition. When suppliers face significant barriers to entry, the government does not benefit from a diverse pool of knowledge, talent, and pricing. By creating barriers, be it through excessive rules, overly complicated language in solicitations, or unclear written evaluation criteria, all of which discourage suppliers from bidding, the government effectively narrows the pool of prospective bidders and makes the process less open. This year, “complexity” was the second most common procurement issue raised to my Office’s attention (see Top 10 Issues on page 13 of this report).
- Overly restrictive evaluation criteria that go beyond what is necessary to meet the department’s business need can limit competition. Such criteria narrow the field of eligible bidders in a manner that is inconsistent with the applicable rules. In some cases the criteria are inappropriately used as a result of no other effective way to manage vendor performance. As I will discuss later, the solution must be to provide federal government buyers with vendor performance management tools and not further allow inappropriate use of evaluation criteria to benefit known good performers or penalize poor performers.

Transparency

Transparency in procurement requires that information be provided in a timely manner that facilitates decision-making and public scrutiny.

- A key issue that my Office has continually identified over the last five years is the lack of documentation necessary to demonstrate why decisions were taken and that applicable procurement rules were followed. This is not an issue to take lightly, as it has serious impacts on public trust and confidence in how taxpayer dollars are being spent.
- Work conducted by my Office this year exposed gaping holes in the quality of contract information made public by departments. Canadians expect the government to provide easy access to complete, accurate and timely procurement information that identifies the recipient, value, and subject matter of government contracts valued above \$10,000. Immediate action is required in this regard for the government to uphold its commitments to transparency and strengthened accountability within the public sector.

“ Moving forward, it is essential that procurement files are well documented to demonstrate how a federal contract was awarded. Addressing this long-standing issue must be a government-wide priority. ”

Identifying problems is always easier than identifying solutions. That said, you cannot offer solutions until you understand the problems. My Office is committed to being part of positive and constructive solutions and looks forward to working with all stakeholders to make sure this moment in time does not pass without making impactful and positive changes.

Time for a government-wide Vendor Performance Management Program

It may seem like common sense. If you hired a plumber to fix a leak in your bathroom, and the leak got worse, or if you hired a snow removal company that always came a day late, you would never choose to work with these suppliers again. Alternatively, if you hire a car mechanic who takes the time to explain problems in a patient manner and properly fixes the issues at a reasonable price, it has the opposite impact. You will want to bring your car back to them when new issues arise. While these examples are relatively simple, the point is clear. In their regular lives Canadians know they want to work with good suppliers and avoid working with poor suppliers.

These same principles apply in federal procurement and government buyers need to be given the right tools to implement these same basic principles when spending Canadian taxpayer dollars. A Vendor Performance Management (VPM) program can provide the mechanism to track information on supplier performance, and share that information across federal departments and regions.

Creating a government-wide VPM including all federal departments and agencies would offer significant benefits that positively address many of the issues noted above. The creation and adoption of a functional VPM program that takes both positive and negative supplier performance in to account for the award of future contracts will not be easy, but this cannot be the barrier to prevent its adoption. There has never been a greater need to act now.

Time for a Chief Procurement Officer

My Office has researched the possibility of creating a Chief Procurement Officer (CPO) in the past. In 2021, we looked at the role, assessing its impact in other jurisdictions and the issues it could address. This year we

looked at the topic again, with a focus on how it could address some of the long standing procurement issues.

The CPO is not a band-aid solution. There are two key factors that affect the outcomes of a procurement: the policy and the people. The CPO could address both. The CPO could lead the creation of policies that are applicable to all departments and agencies, while also assisting with their consistent interpretation and implementation. On the people side, the CPO could lead a capacity building and professionalization initiative, equipping procurement professionals with the tools and skills needed to support the government's business needs.

The CPO could also lead the creation and implementation of a VPM program. A government-wide VPM program is a large initiative that needs focus, leadership, and accountability. Creating the policy is one thing, but implementing it is another. VPM is a program that requires proper training and constant monitoring by a single point of accountability to ensure that it is effective and consistent in its application by all departments and agencies.

Time for Mandate Changes

This year, I reiterate my request for regulatory changes in the following areas to make OPO more relevant for all stakeholders:

1. Recommending compensation greater than 10% of the value of a contract, to provide fair and reasonable relief to suppliers negatively impacted by the erroneous and/or improper award of contracts.
2. Compelling federal departments to provide documentation to support accurate and transparent reviews of complaints and procurement practices. There have been instances where it became necessary to write to departments during the course of a review to remind them to provide documents known to be in their possession. In a 2024 report, the House of Commons Standing Committee on National Defence recommended the Procurement Ombud be empowered to compel documentation from federal departments.
3. Review complaints related to the Procurement Strategy for Indigenous Businesses (PSIB) set-asides program, to ensure all suppliers have access to OPO's redress mechanisms. Presently, such complaints remain outside the jurisdiction of my Office and that of the Canadian International Trade Tribunal¹.

¹In OPO's outreach activities it was noted that some Indigenous suppliers have said they would prefer an Indigenous-led recourse mechanism rather than a GOC one.

My Office is also currently analyzing the need for additional mandate changes to ensure we deliver the best possible services to our stakeholders. One such change involves the mandatory participation of departments in OPO-led ADR services when requested by suppliers, unless the request is deemed to be frivolous by OPO.

Time for Funding

Since our creation in 2008, OPO has operated within its allocated budget, which has remained static for over 15 years. While the Office has tried to continue to deliver on its mandate, budget constraints and inflationary pressures have made it increasingly difficult to serve Canadian suppliers and federal departments effectively on a 15 year-old budget. With an ever-growing demand for OPO services, a permanent funding solution is required. Over the past year, reviews requested by the Minister and Parliamentarians were funded through a one-time funding allocation. While the temporary funding was appreciated in the short-term, it did not address the core problem. OPO is prohibited from using this 1-time funding to hire permanent staff, and is forced to hire external consultants or temporary employees that lack the internal experience and capacity to conduct procurement reviews that are critical to Canadians. OPO's real need is to hire a select number of additional permanent staff to effectively review federal procurement practices and make realistic and implementable recommendations to improve the system. OPO's previous requests for a permanent budget increase were unsuccessful, and as the pressure continues to mount on our Office, I will continue to seek adequate resources to effectively deliver on our mandate.

► To promote gender and linguistic neutrality, an Order in Council was made to change “Procurement Ombudsman” to “Procurement Ombud.”

3 > 2023–2024 by the numbers

Total Number of Cases

582 Cases in 2023-2024

474 Cases in 2022-2023

A new “case” is created each time a stakeholder brings a procurement-related issue to our attention, and may include multiple issues. This year, OPO had 582 cases, which included 862 issues.

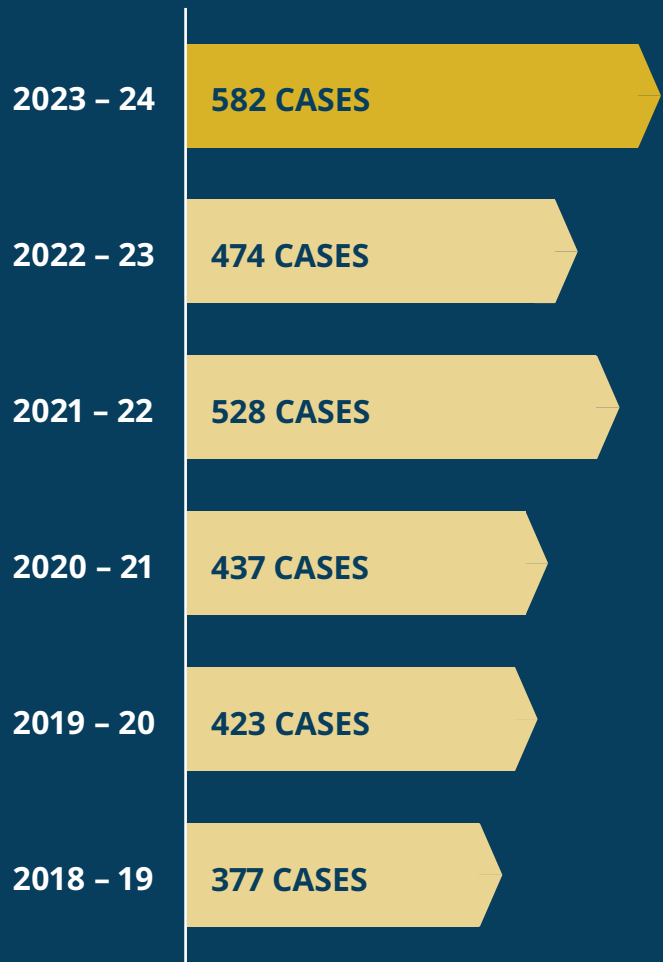
Nature of Cases

- 429** Cases related to general procurement inquiries
- 104** Cases related to the award of a contract
- 49** Cases related to the administration of a contract

Who Contacted Us

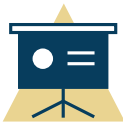
- 443** Suppliers/supplier associations/procurement associations
- 107** Federal department representatives
- 11** Anonymous
- 8** Citizens
- 7** Members of Parliament or other levels of government
- 6** Subcontractors

YEAR OVER YEAR COMPARISON SINCE 2018-2019



4 > Outreach

In 2023-24, OPO was active in raising awareness of the office's services to Canadian suppliers and federal departments. We expanded our stakeholder connections through a series of outreach activities conducted in various regions of Canada, through both in-person and virtual formats.



23 Presentations at procurement events



17 Meetings with procurement stakeholders



21 Departmental meetings



6 University outreach events



17 Online town halls with suppliers



5 In-person town halls with suppliers



17 Kiosks

We also continued to reach our stakeholders through social media channels.



23,105 impressions



3,023 impressions



29,981 impressions










National Outreach Activities




OPO participated in both virtual and in-person outreach activities in 13 cities to let Canadian businesses and other stakeholders know about OPO's existence and services.


5 > Top 10 Issues - What We Heard



OPO tracks the issues raised by procurement stakeholders, and at the close of the fiscal year this information is analyzed and tabulated to form our Top 10 issues.


1	The stakeholder felt the evaluation criteria were unfair, overly restrictive or biased	73 times we heard this issue	
	Criteria is unfair/ biased	32	
	Criteria is restrictive	22	
	Bias for or against an individual supplier or class of suppliers	19	
2	The stakeholder noted that there was complexity in federal procurement	66 times we heard this issue	
	The stakeholder reported that there were barriers to participating in federal procurement	28	
	Systems difficult to use, including: Government Electronic Tendering Service (CanadaBuys), Standard Acquisition Clauses and Conditions Manual, and Methods of Supply	21	
	Overall security process is too long and burdensome	10	
	Confusing/ contradictory/ vague information	7	



3 The stakeholder believed the evaluation was incorrectly conducted or the contract was awarded to the wrong bidder **44** times we heard this issue 

Evaluation incorrectly conducted	27	
Contract awarded to non-compliant bidder	13	
Contract awarded to the wrong compliant bidder	4	

4 The stakeholder reported payment issues **24** times we heard this issue 

Payment is late	13	
Department refused to pay	11	

5 The stakeholder reported that the department did not respond, or responded late, to their questions **15** times we heard this issue 

Inadequate response provided	8	
No response provided	7	

6 The stakeholder believed the department was deviating from the terms and conditions of the contract **11** times we heard this issue 

Department deviating from terms and conditions of the contract	11	
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7	The stakeholder reported that debriefings were not provided or, if they were held, insufficient information was shared	9 times we heard this issue
	Department did not provide a debriefing	5
	Department provided insufficient information or explanations	4
8	The stakeholder believed that solicitations were over-valuing price over technical merit	9 times we heard this issue
	Too much emphasis on price	9
9	The stakeholder is a holder of a standing offer/supply arrangement who is not getting business	7 times we heard this issue
	Supplier that qualified on a standing offer/supply arrangement not getting business	7
10	The stakeholder believed that there were significant modifications to the scope of work after contract award	7 times we heard this issue
	Significant modification to original scope of work	7

Note 1 - We have not validated the accuracy of the information in the above Top 10 list that was shared with us, except where an issue prompted a formal investigation of the complaint. We report this information so procurement stakeholders are aware of the issues being raised to our Office's attention.

6 > Alternative Dispute Resolution (ADR)

OPO offers facilitation and mediation ADR services to suppliers and federal officials when disputes arise during the performance of a contract. Led by trained OPO mediators, these services are a quick, inexpensive and effective way for suppliers and departments to resolve their contract disputes and get back to business.

“ I appreciated how the approach looked at establishing the drivers for each party and framing the problem space in different components. ”

— Canadian Supplier

11 requests:

5 requests did not go to mediation

3 cases, the department declined to participate

2 cases, the supplier withdrew the request

3 requests went to mediation but did not result in a settlement agreement

1 request was resolved informally with OPO's help

2 ongoing ADR processes that will be reported in next year's annual report

Despite identifying ADR as one of its 5 priority areas, real and sustained increases in the use of OPO's ADR services have been difficult to achieve. In 2023-24, OPO received 11 requests for ADR services, marking an increase of 3 requests from the previous year. However, for various reasons, these requests (a) did not lead to a formal mediation process, or (b) did not result in a settlement agreement between the parties. At year end, there were 2 ongoing ADR processes that will be reported in next year's annual report.

While this year saw multiple parties withdraw from mediation, this does not necessarily represent a negative outcome. In 1 case the withdrawal was a result of OPO informally working with the department and the supplier to reach an agreement before entering into formal mediation.

In 3 cases, a department (Department of National Defence, Public Services and Procurement Canada and the Department of

▶ Additionally, 3 cases that carried over from the previous year were resolved in 2023-24, with settlement agreements reached in all 3 cases following OPO-led mediation sessions.

Fisheries and Oceans) declined to participate in a mediation session requested by a supplier. Despite making progress last fiscal year where there was a 100% mediation acceptance rate by federal departments, this year marked the return of a previous issue. OPO has noted this in past annual reports, and strongly urges departments to accept mediation invitations and give mediation a chance, due to the power imbalance between the government and Canadian businesses when the latter are left with no other option than to go to court. Federal departments declining to participate in mediation should be a rare occurrence, and only where OPO agrees that the supplier's position is frivolous and unreasonable.

7 > Review of Complaints

During 2023-24, OPO launched 5 reviews of formal complaints from Canadian suppliers about the award of certain federal contracts. 3 of these reviews were completed within the fiscal year and 2 will be completed in 2024-25 in accordance with legislative timelines. There were no reviews launched concerning the administration of a federal contract.

62 written complaints



5 reviews of complaints



Reviews of complaints completed in 2023-24

1. Acquisition of Janitorial Services by the Department of Fisheries and Oceans

On July 15, 2023, OPO received a written complaint from a supplier regarding the award of a contract by the Department of Fisheries and Oceans (DFO) for janitorial services. The Complainant raised issues around compliance with technical criteria, and the mechanism to allow for compliance. The contract, valued at \$68,026, was awarded on July 10, 2023.

The Procurement Ombud found merit in the issues raised by the Complainant, and concluded that neither the winning bidder nor the Complainant complied with all of the elements of the technical criteria related to attendance at a mandatory site visit. DFO failed to establish a mechanism to allow bidders to demonstrate compliance with the obligations in the RFP, as there was no attendance list available to be signed at the time of the site visit. As a consequence, it was impossible for bidders to comply with the requirements of the mandatory technical criteria.

The Procurement Ombud recommended DFO compensate the Complainant for bid preparation costs of \$2,366. It was further recommended that DFO review procurement documents to ensure a methodology is in place that allows prospective bidders to submit compliant bids, and evaluators to assess and confirm compliance with evaluation criteria.

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

2. Acquisition of Project Manager Services by Pacific Economic Development Canada

On September 22, 2023, OPO received a written complaint from a supplier regarding the award of a contract by Pacific Economic Development Canada (PacifiCan) for the implementation of an independent departmental financial management system. The Complainant raised issues concerning the evaluation of its bid and the adequacy of the debrief provided by PacifiCan. The contract, valued at \$95,120 was awarded on September 6, 2023.

The Procurement Ombud found merit in the issues raised by the Complainant, and concluded that PacifiCan did not properly evaluate the Complainant's bid. There was a lack of detail and clarity regarding the evaluation of a criterion associated with references, insufficient documentation to explain why the Complainant lost points for certain criteria, and undisclosed criteria appeared to have been applied in the evaluation process. Further, PacifiCan did not provide the Complainant with an adequate debriefing as the debrief that was provided lacked required information, and relevant documentation was not shared with the Complainant.

The Procurement Ombud recommended that PacifiCan compensate the Complainant for bid preparation costs of \$8,850.

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

3. Acquisition of Vessel Disposal Services by Transport Canada

On October 18, 2023, OPO received a written complaint from a supplier regarding the award of a contract for vessel disposal services by Transport Canada (TC).

The Complainant raised issues concerning the evaluation of its bid and whether it should have been awarded the contract. The contract was awarded on October 6, 2023 and valued at \$74,158.88.

The Procurement Ombud concluded that TC did not properly evaluate the Complainant's bid as it relied, in part, on undisclosed mandatory criteria to deem the Complainant's bid non-compliant. However, even if its bid had been evaluated properly, the Complainant would not have been awarded the contract as its bid was found non-compliant with another of the mandatory criteria that was included in the solicitation.

The Procurement Ombud recommended that TC compensate the Complainant for bid preparation costs of \$3,276.97. It was further recommended that TC establish a framework which will ensure that evaluation grids match those included in solicitation documents, no criteria are included in evaluation grids which are not explicitly stated in the solicitation, all criteria in the solicitation are evaluated, and the basis of selection set-out therein is followed.

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

Reviews of Complaint to be Completed in 2024-25

The Procurement Ombud launched 2 reviews of complaints in early 2024, which will be completed in 2024-25 in accordance with the legislative timelines set forth in the *Procurement Ombudsman Regulations*.

8 > Procurement Practice Reviews (PPR)

The Procurement Ombud conducts reviews of departmental procurement practices (PPR) to assess their fairness, openness and transparency, and make recommendations for improvement. This year, OPO completed 5 PPRs, including 3 to close out OPO's 5-year plan to review the top procuring departments, and 2 *ad hoc* reviews regarding contracts related to the ArriveCAN application, and contracts awarded to McKinsey & Company.

The full reports for these reviews are available on OPO's website. A follow-up of each review will be conducted approximately 2 years after the initial review's completion. Follow-up reviews are performed to assess the extent to which the Procurement Ombud's recommendations from the initial review have been implemented.

Planned Procurement Practice Reviews Completed in 2023-24

▶ This year OPO completed its 5-year plan to review the procurement practices of the top federal departments in terms of contracting volume and value. In total there were 631 procurement files reviewed, covering 17 federal departments.

Some of the key repeated findings over the 5-year period included:

- Evaluation criteria not clearly communicated in solicitation documents
- Use of overly restrictive criteria which limits the number of potential bidders
- Bid evaluations not completed in accordance with the solicitation, with several instances of contracts awarded to non-responsive bidders
- Poor documentation and failure to adequately record actions taken and the reasons for procurement decisions

The full reports are available on OPO's [website](#).



2

ad hoc
reviews

3

planned
reviews

1. Public Services and Procurement Canada

In May 2023, OPO completed a procurement practice review of Public Services and Procurement Canada (PSPC). OPO reviewed 40 files for competitive contracts awarded by PSPC to determine whether its procurement practices pertaining to evaluation criteria and selection plans, solicitation documents, and evaluation of bids and contract award, supported the principles of fairness, openness and transparency. The review predominantly focussed on contracts issued by PSPC for its own purposes, but also included a number of contracts awarded by PSPC as the Contract Authority on behalf of other government departments.

The Procurement Ombud concluded that, overall, evaluation criteria and selection plans were established in accordance with applicable laws, regulations, and policies. Additionally, the selection methodology in solicitations reviewed clearly communicated the manner in which the contract would be awarded. However, in almost half the files reviewed, solicitations included mandatory evaluation criteria that were not defined in a clear, precise, non-restrictive or measurable manner.

Most of PSPC solicitation documents and organizational practices during the bid solicitation period were found to be consistent with applicable laws, regulations and policies. Solicitations were open to an appropriate number of suppliers and for an appropriate period of time. Communications with suppliers during the solicitation period appeared to be appropriate and supportive of the preparation of responsive bids; however, documentation of communication was incomplete in a few files.

PSPC's bid evaluation processes did not consistently ensure contracts were awarded in accordance with the solicitation. OPO found that a process had been established to support the consistent evaluation of bids; however, the process was not consistently adhered to. In more than half of the files reviewed, documentation did not demonstrate that PSPC followed the applicable processes or demonstrated that PSPC deviated from the solicitation's bid evaluation procedures.

The Procurement Ombud made 3 recommendations as a result of the review. The full report is available on OPO's [website](#).

2. Health Canada and the Public Health Agency of Canada

In June 2023, OPO completed a procurement practice review of Health Canada and the Public Health Agency of Canada (HC/PHAC). The two organizations were reviewed together because they share a single procurement function under a shared partnership agreement. OPO reviewed 40 HC/PHAC competitive procurement files to determine whether their practices pertaining to evaluation criteria and selection plans, solicitation documents, and evaluation of bids and contract award supported the principles of fairness, openness and transparency.

The review found that technical evaluation criteria included in HC/PHAC solicitations were generally not overly restrictive, did not unnecessarily favour or penalize any particular bidder or group of bidders, and were aligned with the requirements. In some instances, however, criteria were not defined in a clear, precise and measurable manner and scoring grids for point-rated criteria lacked clarity.

Solicitations issued by HC/PHAC provided a clear description of the requirements, and in most cases were open to an appropriate number of suppliers and for an appropriate period of time. Communications with suppliers during the solicitation period appeared to support the preparation of responsive bids; however records of communications were incomplete in a number of files and regret letters to unsuccessful bidders were not present or award notices were not posted in about one third of the contract files reviewed.

The review found significant issues with respect to practices pertaining to the evaluation of bids and contract award. The Procurement Ombud concluded HC/PHAC's bid evaluation processes did not consistently ensure contracts were awarded in accordance with the solicitation. Evaluation instructions were only provided to the evaluators in about half of the files reviewed and there were no conflict of interest declarations found in any of the files. Signed consensus scoring results were also missing in a number of files reviewed.

The Procurement Ombud made 5 recommendations as a result of the review. The full report is available on OPO's [website](#).

3. Shared Services Canada

In August 2023, OPO completed a procurement practice review of Shared Services Canada (SSC). OPO reviewed 37 files for competitive contracts awarded by SSC to determine whether their practices pertaining to evaluation criteria and selection plans, solicitation documents, and evaluation of bids and contract award supported the principles of fairness, openness and transparency. OPO also reviewed SSC's procurement governance framework to

determine whether it was effective and ensured that procurement activities were monitored, and procurement risks were able to be identified and mitigated.

The Procurement Ombud found that methods for selecting the successful supplier aligned with the requirement and were clearly communicated in the solicitation. Evaluation criteria also aligned with the requirement. However, a majority of solicitations reviewed had mandatory evaluation criteria that were not clearly stated, demonstrable and measurable. Additionally, in some instances, mandatory evaluation criteria were found to be overly restrictive.

Most of the solicitations reviewed included clear and complete information about the requirement and instructions for submitting compliant bids. Communications with suppliers were appropriate in the majority of files; however, issues were noted in certain files regarding the provision of equal and timely access to information to all potential bidders, which could have affected the fairness of these solicitation processes.

As witnessed in a number of departmental reviews conducted by OPO, there were considerable deficiencies in SSC's bid evaluations and file documentation. Instances were observed where evaluation grids did not match criteria from the solicitation and contracts were not awarded in accordance with the basis of selection.

The review found that SSC has an established procurement governance framework with oversight bodies. These oversight bodies have clearly communicated roles and responsibilities and adequate representation of procurement expertise. However, certain

weaknesses were identified in the tools supporting the SSC procurement governance framework, which could limit its effectiveness.

The Procurement Ombud made 7 recommendations as a result of the review. The full report is available on OPO's [website](#).

Ad hoc Procurement Practice Reviews Completed in 2023-24

1. ArriveCAN Contracts

Following a motion received from the House of Commons Standing Committee on Government Operations and Estimates (OGGO), in January 2023 the Procurement Ombud launched a review of contracts awarded in relation to the ArriveCAN application. ArriveCAN is a digital platform established during the COVID-19 pandemic that enabled travelers entering Canada to provide travel information electronically, rather than on paper-based forms. The objective of the review was to determine whether procurement practices associated with the creation, implementation, or maintenance of ArriveCAN were conducted in a fair, open and transparent manner. The review included 41 competitive and non-competitive ArriveCAN-related contracts

established by the Canada Border Services Agency (CBSA), and by PSPC and SSC on behalf of the CBSA.

Regarding competitive procurement practices leading to the award of contracts, overall, solicitation documents were found to be clear and contained information potential bidders required to prepare a responsive bid. However, mandatory criteria used in a solicitation leading to the award of a \$25 million contract were found to be overly restrictive and favoured an existing CBSA supplier. That supplier was the only bidder and was awarded the contract.

OPO also identified issues related to the achievement of “best value” in many procurements. For almost half of the 23 competitive procurements reviewed, the use of overly restrictive median bands in the financial evaluation of bids stifled price competition and resulted in rejection of otherwise high quality bids. Further, in roughly 76% of applicable contracts, resources (i.e., specific individuals) proposed in the winning bid did not perform any work on the contract. In these cases, suppliers were authorized to perform work through an administrative instrument referred to as a “task authorization”. When task authorizations were issued under these contracts the supplier offered up replacement resources, but not the individuals that had originally been proposed in order to win the contract. While it is recognized that there may be legitimate reasons for some proposed resources being unavailable when task authorizations are issued, the number of times it occurred and the absence of file documentation explaining why these individuals were not made available raised serious concerns with these contracts.

“Just wanted to express the gratitude on behalf of our firm, as we were closely monitoring the development of the ArriveCan case, and when we saw you being a part of this process, we felt that we would like to reach out and say thank you for all the hard work that makes our society and business environment a better place to be.”

— Canadian Supplier

Also with respect to task authorizations, the review found significant deficiencies with the descriptions of tasks and activities to be performed, and task authorizations that were approved without a record showing that an assessment had been performed to confirm that the proposed resource had the requisite experience and education for the applicable category and level.

Finally, contract information was not proactively published for many ArriveCAN-related contracts. For 41% of the contracts reviewed, the original contract or one or more contract amendments were not available on the Open Government website, which runs counter to the government's commitment to transparency and strengthened accountability within the public sector.

In conclusion, OPO found practices for awarding competitive and non-competitive contracts, for issuing task authorizations and for proactive publication of contract information that were inconsistent with government policy and that threatened fairness, openness and transparency of government procurement. The Procurement Ombud made 13 recommendations to address the issues identified. The report is available on OPO's [website](#).

2. Contracts Awarded to McKinsey & Company

Following a request from the Minister of Public Services and Procurement, the Procurement Ombud conducted a review of procurement practices of federal departments pertaining to contracts awarded to the consulting firm McKinsey & Company (McKinsey). The objective of the review was to determine whether these practices were consistent with applicable trade agree-

► OPO noted other practices which challenge the ability of the Government's contracting practices with McKinsey to stand the test of public scrutiny. Collectively, these practices create a strong perception of favoritism towards McKinsey.

ments, legislation and regulations, and government policy.

OPO reviewed 32 contracts awarded to McKinsey with a total value of \$112.8 million. This included 19 contracts for benchmarking services with a total value of \$48.8 million that were issued without competition against a procurement instrument known as a National Master Standing Offer (NMSO). The review found that the NMSO issued to McKinsey for benchmarking services may have been improperly established on a non-competitive basis given that the sole-source justification documents did not contain the required information needed to justify it.

The lack of adequate sole-source justification extended to all but one of the non-competitive contracts issued against the NMSO. In total, 18 of these 19 contracts were awarded by PSPC on behalf of their client departments without documented justification. Further, for the vast majority of contracts issued against the NMSO, there was no description of the requirement-specific work to be carried out by McKinsey. In these cases, it was unclear what the requirements were intended to be, independent of McKinsey's input. OPO found the lack of diligence and oversight for these contracts to be troubling and a serious threat to the fairness of the procurement process.

OPO further identified other issues which challenged the ability of the government's contracting practices to stand the test of public scrutiny. These included changing procurement strategies to allow for McKinsey's participation, avoiding use of mandatory methods of supply in favour of directing contracts to McKinsey, failure to establish cost estimates in advance of communicating with potential bidders, and the inappropriate re-evaluation of bids resulting in the award of a contract to McKinsey.

By and large, contracts were proactively published as required by government policy. However, numerous issues were noted with respect to the accuracy of published information, most notably non-competitive contracts being incorrectly reported as having been awarded through competitive processes.

The Procurement Ombud made 5 recommendations to address the issues identified. The report is available on OPO's [website](#).

Follow-up Reviews





In 2023-24 OPO completed 3 follow-up reviews. OPO launched an additional 5 follow-up reviews, the results of which will be published next fiscal year. For follow-up reviews, the highest performance rating of "Satisfactory plus" can only be obtained in instances where the "initial" review did not contain any recommendations for improvement from the Procurement Ombud. As all 3 of the follow-up reviews summarized below were based on initial reviews that did contain recommendations, the highest possible rating that could be obtained in each case was "Satisfactory".

▶ OPO follows-up on procurement practice reviews approximately 2 years after the initial review. Follow-up reviews assess the actions taken in response to the Procurement Ombud's recommendations in the initial report, and are based on departments' self-assessments in conjunction with supporting documentation. Follow-up reviews utilize both a progress scale and report card to assess progress.

OPO's work on follow-up reviews has been impacted by budget limitations, and as such, some important follow-ups to assess the actions taken by departments in response to the Ombud's recommendations are taking place more than 2 years after the initial review.

OPO Report Card

Overall Performance	Assessment Criteria
Satisfactory plus	Initial review resulted in no recommendations and rating is based on initial review results
Satisfactory	Initial review resulted in 1 or more recommendations and action plan(s) have achieved Level 5 or a combination of Level 4 and Level 5 implementation
Partially satisfactory	Initial review resulted in 1 or more recommendations and some progress has been made in implementing action plan(s)
Unsatisfactory	Initial review resulted in 1 or more recommendations and insignificant progress has been made to implement action plan(s)

Line of Enquiry (LOE)	Department of Fisheries and Oceans	Environment and Climate Change Canada	Employment and Social Development Canada
1. Evaluation criteria and selection plans	Satisfactory 	Satisfactory 	Partially Satisfactory 
2. Solicitation documents and organizational practices	Satisfactory 	Satisfactory 	Partially Satisfactory 
3. Evaluation of bids and contract award	Satisfactory 	Satisfactory 	Partially Satisfactory 

1. Follow-up report to the procurement practice review of the Department of Fisheries and Oceans

The initial review of the Department of Fisheries and Oceans (DFO) was undertaken in 2019-20 to determine whether DFO's procurement practices pertaining to evaluation criteria and selection plans, solicitation documents, and evaluation of bids and contract award supported the principles of fairness, openness and transparency. This follow-up was performed to assess DFO's progress in implementing the Procurement Ombud's 6 recommendations from the initial review. OPO assessed 5 of the 6 recommendations as being fully implemented by DFO (Level 5), with the remaining recommendation as having achieved Level 4 "Substantial Implementation".

After reviewing progress made toward implementing the action plans for each recommendation, and in consideration of the established assessment ratings, a rating of "Satisfactory" was awarded for each of the 3 lines of enquiry from the initial review. DFO's descriptions of actions taken and supporting documentation demonstrated reasonable and credible progress had been achieved in response to all recommendations, although more formal documentation would strengthen DFO's efforts and help it to be better prepared for future audits and to defend against external challenges.

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

2. Follow-up report to the procurement practice review of Environment and Climate Change Canada

The initial review of Environment and Climate Change Canada (ECCC) was undertaken in 2019-20 to determine whether ECCC's procure-

“ I can assure you that a great deal of work has been invested in this exercise allowing us to gain valuable insights that have helped us improve our procurement practices here [...]. My team truly appreciated the professionalism and dedication of the entire OPO team throughout this journey. ”

— Departmental representative

ment practices pertaining to evaluation criteria and selection plans, solicitation documents, and evaluation of bids and contract award, supported the principles of fairness, openness and transparency. This follow-up was performed to assess ECCC's progress in implementing the Procurement Ombud's 4 recommendations from the initial review. OPO assessed 3 of the 4 recommendations as being fully implemented by ECCC (Level 5) with the remaining recommendation as having achieved Level 4 "Substantial implementation".

After reviewing progress made toward implementing the action plans for each recommendation and in consideration of the established assessment ratings, a rating of "Satisfactory" was awarded for each of the 3 lines of enquiry from the initial review. ECCC's descriptions of actions taken and its supporting documentation demonstrated that reasonable and credible progress had been achieved in response to all recommendations. OPO was encouraged by the progress made and commended ECCC for its commitment to supporting fairness, openness, and transparency in the procurement process.

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

3. Follow-up report to the procurement practice review of Employment and Social Development Canada

The initial review of Employment and Social Development Canada (ESDC) was undertaken in 2019-20 to determine whether ESDC's procurement practices pertaining to evaluation criteria and selection plans, solicitation documents, and evaluation of bids and contract award supported the principles of fairness, openness and transparency. This follow-up was performed to assess ESDC's progress in implementing the Procurement Ombud's 3 recommendations from the initial review. Information and substantiating documentation provided by ESDC did not clearly demonstrate that structures and processes had been put in place subsequent to the initial review. OPO assessed ESDC's level of implementation at Level 3 "Prepara-

tion for Implementation" for all 3 recommendations as positive results had not yet been achieved or identified.

After reviewing progress made toward implementing the action plans for each recommendation, a rating of "Partially satisfactory" was awarded for each of the 3 lines of enquiry from the initial review. ESDC's descriptions of actions taken and supporting documentation demonstrated that some progress had been achieved, but not enough to adequately address the 3 recommendations. More oversight, regular training sessions/programs and formal documentation would serve to strengthen ESDC's efforts and help ensure fair, open and transparent procurement processes.

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

9 > Knowledge Deepening and Sharing (KDS)

1. Chief Procurement Officer: From Silos to Synergy

This year OPO launched a second study on the potential role of a Chief Procurement Officer (CPO). OPO conducted research on the topic in 2021, publishing a study looking at some of the procurement issues the role could address. This year OPO looked at how the role could help improve federal procurement, and what long standing issues or policy gaps its mandate could address.

The study provides an overview of the present procurement environment, noting roles and responsibilities of key institutions. After outlining the current environment, the study identifies 3 key gaps and issues within the present structure. The first gap can be termed the “creator versus implementor of policy”, regarding the roles of the Treasury Board Secretariat and Public Services and Procurement Canada. The analysis notes a graying of roles in the present environment, leading to challenges across federal departments with respect to both the clarity and implementation of procurement rules. The second gap concerns capacity building and professionalization of the procurement function, including issues associated with the lack of standardized training for career procurement officials. The third gap is the lack of a government-wide Vendor Performance Management (VPM) program, which could be used both to hold suppliers accountable for poor contract performance, and to reward them for good performance.

▶ A Chief Procurement Officer and Vendor Performance Management (VPM) are a step toward rebuilding trust in federal procurement

The CPO’s mandate could help address these gaps by providing leadership and consistency in the: (a) creation, interpretation and implementation of policy, (b) oversight of a training and development program to professionalize the procurement function, and (c) launching of a government-wide VPM program that would evaluate supplier performance consistently and fairly, and take both good and bad supplier ratings in to account in the award of future federal contracts.

A CPO could help address long standing issues and policy gaps that are decades old. Though changes and revisions to structures have occurred over time, they are often cumbersome and unclear, and are clearly not enough. Serious restructuring is something worth considering.

▶ The Chief Procurement Officer would be a leader in federal procurement, speaking for a whole of government approach to procurement

► OPO launched additional research studies to be completed in 2024-25:

- Construction Contract Administration
- Negotiated Requests for Proposals
- Best Value

Construction Contract Administration

The purpose of this KDS study is to explore some of the most commonly occurring issues during the contract administration phase of construction contracts. The study will also look at current practices in federal construction contracting, and adapting to construction industry trends and evolution.

Negotiated Requests for Proposals (RFP)

This study on negotiated RFPs examines emerging flexible tendering formats that the federal government could adopt in its own solicitations, with particular focus on their

risks, benefits, and associated challenges. This study examines parallels between negotiated RFPs, agile procurement, and PSPC's Phased Bid Compliance Process.

Best Value

Historically, the notion of best value had a monetary emphasis and resulted from a clear basis of selection of either lowest priced, or the optimal balance of lowest priced and technical merit. The purpose of the study is to examine how best value was originally intended in federal procurement, and how it continues to evolve under current government policy to include socio-economic, environmental, and life cycle considerations. The study will include a comparison of the Canadian federal procurement approach with other levels of government within Canada and internationally.

10 > Diversity and Inclusion

OPO has remained steadfast in its commitment to Diversity and Inclusion over the last 6 years, both in its internal contracting and human resources practices, as well as in its efforts to help diversify the federal supply chain. To crystallize this commitment for the years to come, diversity was incorporated as one of the 5 priorities (along with simplification, transparency, growth of alternative dispute resolution services, and KDS) supporting the office.

► Diversity is at the heart of OPO. It reflects our people, our views, and our commitment to our stakeholders. OPO seeks to promote Diversity and Inclusion both in the workplace and the community by applying the diversity and inclusion lens to all of its activities, including staffing actions, learning opportunities, research studies and services that help diversify the federal supply chain. OPO strives to be a leader in the Government of Canada in promoting diversity and inclusion in both official languages.

1. Diversifying the Federal Supply Chain Summit

The 2023 Summit marked OPO's 5th year of hosting this event.

The Summit was created to help increase diversity in the federal procurement supply chain by raising awareness of the public and private sector programs that can help Indigenous and diverse-owned businesses (including Black and racialized Canadians, women, 2SLGBTQI+ Canadians, persons with disabilities and other underrepresented groups) win federal contracts.

Spanning 2 days, the virtual Summit provided sessions to assist suppliers with the information and practical skills needed to win federal government contracts, as well as networking opportunities connecting suppliers with other suppliers, representatives from the Government of Canada, supplier councils, and other stakeholders.



Over
650
people attended
the virtual Summit

2. Diversifying the Federal Supply Chain Mentoring Sessions in Ottawa and Montreal

Similar to the Summit, these sessions are designed to raise awareness of the public and private sector programs that can help small businesses and businesses owned by Indigenous and diverse suppliers do business with the federal government, and to provide mentoring to those suppliers seeking more in-depth capacity building.

“ I am very lucky as a refugee landed in Canada in October 2019 and took part in [the Summit] on March 2020. I got my first order in June 2020 from [a federal department.] So far I have supplied more than 10 [shipments] to [the] Federal Government. Really I am very very happy and appreciate...your program and all team members. ”

— Canadian Supplier



Raising awareness of the public and private sector programs that can both assist with and build the competencies needed to win federal contracts



Increase the diversity of bidders on federal government contracts



Networking with the procurement community



Roundtable mentoring sessions with procurement experts



Participation from 9 organizations, including federal departments and business councils.



Kiosks and information sharing

11 > Statement of Operations

Authority and Objective

The position of Procurement Ombudsman was established through amendments to the *Department of Public Works and Government Services Act*. The Procurement Ombud’s mandate is further defined in the *Procurement Ombudsman Regulations*. The Office of the Procurement Ombud’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 the Office of the Procurement Ombud is part of Public Works and Government Services Canada’s (PWGSC) 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 OPO is the need for it 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.²

Proactive Disclosure

Compliance with Treasury Board Secretariat and Public Services and Procurement Canada financial management policies requires the mandatory publication of the Procurement Ombud’s travel and hospitality expenses. It also requires disclosure of contracts entered into by the Office of the Procurement Ombud 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 are published under PSPC as the organization.

Statement of Operating Costs

Expenses	2023-2024 (\$)
Salaries and employee benefits	3,298,930.31
Professional services	215,229.40
Operating expenses	76,395.90
Information and communication	191,514.13
Materials and supplies	10,521.78
Corporate services provided by Public Services and Procurement Canada (finance, human resources, information technology, other)	379,937.92
Total	\$4,172,529.44

² 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.

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