

Office of the Procurement Ombud

Review of Complaint:
Administration of a Contract For
Second Language Training Services for
Foreign Service Officers With
Immigration, Refugees and Citizenship
Canada

June 2025



Government
of Canada

Office of the
Procurement Ombud

Gouvernement
du Canada

Bureau de l'ombud
de l'approvisionnement

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The complaint

1. On January 19, 2025, the Office of the Procurement Ombud (OPO) received a written complaint from a Canadian Supplier (the Complainant) regarding the administration of a contract awarded by Immigration, Refugees and Citizenship Canada (IRCC). The contract was for the provision of “Second Language Training Services for Foreign Service Officers.”
2. Contract no 6000285 was awarded to the Complainant on September 12, 2024, for a value of \$982,499.00 (taxes included) and included the option to extend by up to three additional 1-year periods.
3. The complaint alleged that IRCC insisted on the use of a scheduling program which deviated from the terms and conditions of the Statement of Work in the contract, and then wrongfully issued a Termination for Convenience Notice to the Complainant on January 9, 2025.
4. The Complaint raised the following issues with regard to the contract administration practices of IRCC:
 - Issue 1:** Did IRCC deviate from the terms and conditions of the contract?
 - Issue 2:** Did IRCC wrongfully terminate the contract?
5. On February 3, 2025, OPO confirmed the complaint met the requirements of the Procurement Ombudsman Regulations (the Regulations), and the complaint was considered filed.

Office of the Procurement Ombud’s mandate

6. This review of complaint was conducted under the authority of paragraph 22.1(3)(c) of the Department of Public Works and Government Services Act and sections 15 to 22 of the Regulations.
7. Pursuant to subsection 18(2) of the Regulations, the Procurement Ombud requested the Complainant and IRCC provide all documents and information necessary for the review. IRCC was also asked to provide a written response to the issues identified in the complaint.
8. The documents and information were necessary to conduct the review in accordance with Section 20 of the Regulations, which specifies that the Procurement Ombud shall take into consideration, for the purpose of the review, any relevant factors, including the following:
 - whether the administration of the relevant contract was conducted in a reasonable manner in the circumstances; and
 - whether any of the parties acted in bad faith.
9. In addition, Section 21 of the Regulations specifies the Procurement Ombud may not make recommendations:

- altering the terms and conditions of a contract; or
 - providing a remedy other than as specified in the contract.
10. The chronology of events and the findings in this report are based on the documents and information provided by the Complainant and IRCC, as well as relevant publicly available information. The failure by either the Complainant or IRCC to disclose any relevant documents or information in their possession could impact the findings of this report.

Chronology of events

11. On June 13, 2024, IRCC published a competitive solicitation for Second Language Training for Foreign Service Officers on CanadaBuys, the Government of Canada's official online procurement platform.
12. On September 12, 2024, IRCC awarded contract no 6000285 to the Complainant for a total value of \$982,499.00. The contract period was from the date of contract award until March 31, 2025. The contract included options to extend by up to three additional 1-year periods under the same conditions.
13. On September 20 and 21, 2024, email communications between IRCC and the Complainant were exchanged about the evaluation schedule in the contract. The Complainant stated that the IRCC team said it had success using the free Calendly platform for similar scheduling requirements.
14. IRCC claimed that it provided the Complainant the list of student contact information, with an October 4, 2024, deadline to deliver the assessment reports in order to organize student placements for November 1, 2024, enrolment.
15. From October 2nd to October 7th, several email communications were exchanged between IRCC and the Complainant, where IRCC noted recurring issues concerning missed deadlines and insufficient quality of work.
16. On October 2, 2024, IRCC informed the Complainant in writing that daily email check-ins were required each morning and provided instructions on action items that required immediate attention (e.g., sending links for online assessments, and for students to schedule their oral evaluations).
17. On October 4, 2024, IRCC informed the Complainant by email that they had missed the October 4th deadline to submit a list of IRCC learners that had completed language evaluation testing.
18. Later on October 4, 2024, the Complainant responded to IRCC with an official letter regarding the delay noted, stating the main reason for delay being time required to coach teachers on how to use Calendly and Microsoft Teams at the same time.
19. On October 5, 2024, the Complainant sent an email to IRCC communicating their disagreement with IRCC's October 4 email regarding the missed deadline.

20. On October 7, 2024, IRCC emailed the Complainant asking them to deliver a list of learners who had completed the oral evaluation and final language assessments by October 8.
21. On October 9, 2024, the IRCC Contracting Authority met with the IRCC Project Authority to discuss the situation and the issues noted with the implementation of the contract.
22. On October 17, 2024, IRCC issued a Stop Work Order to the Complainant citing “compliance issues regarding the scope of work”.
23. On November 11, 2024, the Complainant followed up with IRCC for a status update.
24. On November 12, 2024, IRCC acknowledged the November 11 email stating they would get back to the Complainant soon. Later on November 12, 2024, the Complainant acknowledged the November 12 response from IRCC stating they were awaiting direction. There is no record of further communication between IRCC and the Complainant until January 9, 2025.
25. On January 9, 2025, a Notice of Termination for Convenience was sent to the Complainant by IRCC with a due date for the Complainant to respond by January 24, 2025, with a claim for any costs reasonably and properly incurred by the Complainant in performing the contract.
26. On January 19, 2025, the Complainant submitted a complaint to OPO.
27. On January 24, 2025, which was the deadline for the Complainant to respond to IRCC’s Termination for Convenience Notice, the Complainant did not provide a response to IRCC.
28. On February 3, 2025, the review of complaint was launched by OPO, and both parties were notified accordingly.

Analysis of issues and findings

Issue 1: Did IRCC deviate from the terms and conditions of the contract?

Complainant’s statements

29. The Complainant stated that at the kick-off meeting with IRCC on September 18, 2024, IRCC introduced a new IT program called Calendly and “insisted” that the Complainant use it for scheduling the assessments. In the Complainant’s words “IRCC Staff members insisted vehemently that my organization had to use a platform called Calendly to program the short list of students they had sent to us to evaluate.” The Complainant further stated that Calendly was an unfamiliar program to them and that they needed to purchase a licence to use it and needed time to train their staff on its use.

30. The Complainant stated they received a list of personal email addresses for the students from IRCC, not departmental email addresses as they had expected which contain the first and last names of the students. According to the Complainant, this created more administrative work and required them to use both Calendly and Microsoft Teams to send the invitations.
31. The Complainant stated that as the Calendly tool was new to them, they tried to use it to program their diagnostic evaluation questions. They claimed that their IT team inadvertently used the English version of Calendly which does not recognize French characters and consistently removed accents, changed French words to English and shifted the formatting of the multiple-choice answers.
32. Finally the Complainant argued that if IRCC had allowed the Complainant to use its own internal program to execute the contract, all mistakes stemming from the use of Calendly would have been avoided.

IRCC's statements

33. In their response to OPO, IRCC stated that through several email exchanges with the Complainant on September 20-21, 2024, the Complainant offered IRCC an in-person location where language testing for IRCC employees could be conducted. IRCC stated that on September 21, 2024, the Project Authority confirmed that no students would be available in person and that virtual language assessment evaluations would be required for all students. Further, IRCC stated that the Project Authority mentioned that in the past the IRCC team had success using the free Calendly platform for undertaking similar scheduling, and also provided a list of the student contact information to the Complainant with an October 4th deadline to deliver the language assessment reports.
34. The Project Authority offered using Calendly for the Complainant's consideration when advising that the Complainant would need to set up virtual evaluations. IRCC provided OPO the email where the Complainant responded that while they were not aware of the Calendly platform, that the Complainant's IT team may be, failing which, they would simply use MS Teams for the scheduling and virtual evaluations.
35. In their response to OPO, IRCC noted that, "contrary to the statements in the complaint, there was no Calendly requirement in the solicitation because there was no specific platform required; there is no requirement in the contract to use Calendly; there was no other basis requiring [...] the use of Calendly; and even if [the Complainant] chose to use Calendly, it would not displace any "internal program to evaluate students" or "internal program to execute the contract" as suggested in the complaint."
36. Finally, IRCC stated that there was no requirement for the Complainant to procure a license to use the Calendly platform, or to use any particular platform to schedule the pre-engagement student evaluations.

Analysis - Issue 1

37. To determine whether IRCC deviated from the terms and conditions of the contract, the Procurement Ombud had to decide if there was sufficient written evidence to support the Complainant's claim that IRCC required the Complainant to use a scheduling program called Calendly, contrary to the terms and conditions of the contract.
38. Section B.11.1 of the contract signed by both parties states that:
- “The Contracting Authority is responsible for the management of the Contract and any changes to the Contract must be authorized in writing by the Contracting Authority. **The Contractor must not perform work in excess of or outside the scope of the Contract based on verbal or written requests or instructions from anybody other than the Contracting Authority**” (emphasis added).
39. The Canadian International Trade Tribunal (CITT) has looked at the question of the burden of proof for allegations raised before it. Relevant CITT jurisprudence points to the need for the Complainant to support its allegation by facts and that bald allegations alone are insufficient. For example, in *Armored Specialty Cars (ASC) GMBH* (PR-2013-033) the Tribunal ruled that it is incumbent on the Complainant to substantiate its allegations with probative evidence (para 18). In the same case the CITT further notes that: “it is well established that complainants bear the onus of substantiating the allegations that they make when bringing a case before the Tribunal; unsubstantiated allegations are insufficient for the Tribunal to proceed with an inquiry.” (para 16).
40. It was noted in emails provided by IRCC that on September 20, 2024, the Complainant confirmed that they wanted to establish a schedule for the students to attend their oral evaluation in person at their office in Ottawa.
41. On September 21, 2024, IRCC responded via email that it would not be possible to have in-person oral evaluations for the current and future learners and that all evaluations needed to be done virtually.
42. In the same e-mail, IRCC added “In the past, my team has used the free Calendly platform to send links to individuals to allow them to book a timeslot to meet with my team and we have found this works incredibly well. Please let us know if we can be of any help.”
43. On September 21, 2024, the Complainant responded “That even works perfectly well for us. I am not conversant with the Calendly Platform, but my IT will certainly know. **We will see if we can use that. If not, we will schedule from our Teams Invite platform.** Thanks.” (emphasis added).
44. The only reference in the contract to software is found at Section 6.6.5, under the Technology heading which states: “Ideally, Microsoft Teams should be used as the tool for communication between Contractor and Project Authority, or in the exceptional circumstance that training would be delivered virtually.”

45. IRCC stated that Calendly is a scheduling platform and if the Complainant chose to use Calendly for that purpose, it would not displace any “internal program to evaluate students” or “internal program to execute the contract” as suggested in the complaint.
46. Yet the Complainant argued that “we had to use it to do everything including the setting up of our evaluation questions” and went ahead to use it as a tool to perform the evaluations.
47. As noted in the above-cited CITT jurisprudence, a Complainant must substantiate their allegations with probative evidence. In the same vein, the Complainant must support with substantiating evidence all allegations raised in their Complaint submitted to OPO.
48. OPO’s review found no evidence of any contract amendments or other documents issued by the Contracting Authority or any other substantiating evidence to demonstrate that IRCC insisted that the Complainant must use Calendly as either a scheduling or assessment tool.
49. OPO reiterates the importance of documentation and proper record keeping for both IRCC and the Complainant, including the documenting of any meetings and key decisions made, as a best practice throughout the contract administration phase. In the review of the e-mail exchanges provided by both the Complainant and IRCC, it was evident that some emails were omitted in the documents provided to OPO.
50. Moving forward, OPO encourages suppliers to require that any changes (or perceived changes) to the contract terms be provided to them in writing and through the execution of a contract amendment issued by the Contracting Authority named in the contract, before actioning any change.

Finding - Issue 1

51. OPO found no evidence of any contract amendments or any other form of IRCC communication indicating that IRCC insisted the Complainant specifically use Calendly as a scheduling or assessment tool. The Procurement Ombud therefore concluded that the allegation raised by the Complainant that IRCC deviated from the terms and conditions of the contract is not supported.

Issue 2: Did IRCC wrongfully terminate the contract?

Complainant’s statements

52. On October 9, 2024, IRCC sent an email to the Complainant with respect to its performance and compliance with the terms of the contract.

53. The Complainant said that on October 17, 2024, IRCC issued a Stop Work Order. The Complainant provided an official response to IRCC on the same date noting “[w]e are somehow confused as to the content of the letter referring to compliance issue and that we should stop incurring any further expenses forthwith until further instruction.”
54. The Complainant followed up with IRCC on November 11, 2024.
55. IRCC acknowledged the November 11 email on November 12, 2024, replying they would get back to the Complainant soon.
56. The Complainant said that on January 9, 2025, approximately three months later, IRCC’s Contracting Authority provided a formal Notice of Termination for Convenience letter in an email that detailed the reasons for termination, including missed deadlines and deficiencies identified in the work provided.
57. The Complainant did not respond to the above-noted Notice of Termination for Convenience with a claim for any costs reasonably and properly incurred by the Complainant, but instead filed a complaint with OPO on January 19, 2025.

IRCC’s statements

58. IRCC said that on October 9, 2024, IRCC met with its internal clients to discuss the issues with the contract. IRCC said that they agreed to give 2 weeks to the Complainant to rectify the situation. IRCC added that during these two weeks, no progress was made by the Complainant and a summary including all anomalies was sent to senior management of IRCC’s International Platform Branch to discuss contract termination.
59. IRCC stated that on October 9, 2024, it sent an email to the Complainant concerning the latter’s performance and non-compliance with the terms of the contract. Neither the Complainant nor IRCC provided this e-mail to OPO.
60. On October 17, 2024, IRCC issued a Stop Work Order to the Complainant, stating that “[d]ue to compliance issues regarding the scope of work, we need to halt all work related to this project until further notice.”
61. On January 9, 2025, IRCC’s Contracting Authority provided a formal Notice of Termination for Convenience letter in an email that detailed the reasons for termination, including missed deadlines and deficiencies identified in the work provided. IRCC said that the Complainant missed the deadline to submit the list of the 25 IRCC learners that had completed their online evaluations and a diagnostic assessment of their results. IRCC said that on October 4th, the Complainant had provided an excel sheet with only partial data.
62. Finally, the Notice of Termination for Convenience included an attachment which outlined that in accordance with the unrestricted right of Canada to terminate the contract for convenience, the contract was terminated pursuant to CIC-GC-001 (2024-01-10), Termination for Convenience, of general terms and conditions – Medium/High Complexity

Goods and Services Contracts (Section A32 - General Conditions - professional Services (Medium Complexity)).

Analysis - Issue 2

63. To determine whether IRCC wrongfully terminated the contract, the Procurement Ombud examined the circumstances related to the termination and whether IRCC acted in a manner inconsistent with the terms and conditions of the contract.
64. IRCC cited the A32 Termination for Convenience clause of General Conditions CIC-GC-001 (2024-01-10) Med-Complexity Goods and Services Contract as the legal basis for the termination of the contract. Paragraphs 1 and 2 of this clause read:
 1. At any time before the completion of the Work, **the Contracting Authority may, by giving notice in writing to the Contractor, terminate for convenience the Contract or part of the Contract.** Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must proceed to complete any part of the Work that is not affected by the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.
 2. If a termination notice is given pursuant to subsection 1, **the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred** to perform the Contract to the extent that the Contractor has not already been paid or reimbursed by Canada. (...) (emphasis added)
65. General Conditions CIC-GC-001 (2024-01-10) Med-Complexity Goods and Services Contract are incorporated in the contract by reference, found in Appendix A of the contract entitled General terms and Conditions. More specifically, paragraph A3.1 here notes that "General Conditions CIC-GC-001 (2024-01-10) Med-Complexity Goods and Services Contract shall apply to and form part of this contract". IRCC was therefore entitled to invoke CIC-GC-001 (2024-01-10) A32 Termination for Convenience.
66. The next step in the analysis requires a determination on whether IRCC's Contracting Authority complied with the conditions of the CIC-GC-001 (2024-01-10) A32 Termination for Convenience clause.
67. IRCC terminated the contract for convenience by providing a written notice of the termination to the Complainant, as required by para 1 of the CIC-GC-001 (2024-01-10) A32 Termination for Convenience clause.
68. In addition, OPO observed that upon issuing the Termination for Convenience letter to the Complainant, IRCC simultaneously provided the Complainant with a detailed rationale outlining the various performance issues and dates leading up to the letter. When a contract is terminated using termination for convenience, no justification is required by the

Government. When a contract is terminated for cause, a justification is required which may have created some confusion for the Complainant regarding the nature of the termination process being followed.

69. As per paragraph 2 of the CIC-GC-001 (2024-01-10) A32 Termination for Convenience clause, when a contract is terminated for convenience, the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred to perform the Contract.
70. In their Notice of Termination for Convenience on January 9, 2025, IRCC asked the Complainant to submit by January 24, 2025, any arising claim under the contract. The Complainant indicated that they did not submit a claim, as they were no longer communicating with IRCC and decided to lodge a complaint against IRCC through OPO. Instead the Complainant submitted the cost incurred for the purchase of Calendly software to OPO.
71. To summarize, the contract was terminated pursuant to the CIC-GC-001 (2024-01-10) A32 Termination for Convenience clause. To invoke clause the Contracting Authority must give written notice and provide opportunity for the Contractor to be reimbursed for the costs reasonably and properly incurred. In this case, the Contracting Authority provided the Notice of Termination for Convenience, the Notice was in writing, and it specified that **the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred** to the extent that the Contractor has not already been paid or reimbursed by Canada.

Finding - Issue 2

72. The Ombud finds that in terminating the Contract, IRCC acted consistently with the CIC-GC-001 (2024-01-10) A32 Termination for Convenience clause. Therefore, the Complainant's claim that IRCC wrongfully terminated the contract is not supported.

Conclusion

73. No evidence was found to substantiate the allegations raised in the complaint that (1) IRCC deviated from the terms and conditions of the contract, or (2) IRCC wrongfully terminated the contract. OPO's review therefore concludes that both allegations raised by the Complainant are not supported.

Recommendation

74. The Procurement Ombud recommends that the Complainant consider submitting a claim to IRCC in accordance with paragraph 2 of the CIC-GC-001 (2024-01-10) A32 Termination for Convenience clause, for costs that were reasonably and properly incurred to perform the contract.
75. The Procurement Ombud also recommends that, if the Complainant submits such a claim, IRCC, within a reasonable period of time after receipt of the claim, consider and pay the Complainant for costs reasonably and properly incurred in performing the contract, to the extent that the Complainant has not already been paid or reimbursed.