

Office of the Procurement Ombud

Review of Complaint:
Acquisition of Office Furniture by the
Department of National Defence

July 2025



Government
of Canada

Office of the
Procurement Ombud

Gouvernement
du Canada

Bureau de l'ombud
de l'approvisionnement

Canada

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The Complaint

1. On January 30, 2025, the Office of the Procurement Ombud (OPO) received a written complaint from a supplier (the Complainant) regarding a contract awarded by the Department of National Defence (DND). The contract was for the supply, delivery and installation of office furniture and was awarded under Supply Arrangement (SA) number E60PQ120001/PQ or E60PQ-140003/PQ established by Public Services and Procurement Canada (PSPC) for furniture for office seating or workspaces. The contract was awarded on January 21, 2025 and was valued at \$25,471.68 (taxes excluded).
2. The Complainant contacted OPO stating it believed that DND evaluators had improperly evaluated its bid as being non-compliant because it could not guarantee delivery by the date required.

“...the department asked if the products in the solicitation can be delivered by March 13th 2025. Knowing that there is no guarantee if and when we would receive the contract...we responded with "Our lead times are approximately 6-10 weeks from the time the order is placed". It is our understanding that for this reason we have been disqualified...standard lead time in this industry is between 6-10 weeks.”

3. The complaint raised the following issues:
 1. Was mandatory technical criterion (M2) for the date of work completion unreasonable?
 2. Did DND properly evaluate the Complainant’s proposal against mandatory technical criterion M2 and was the process used to amend M2 fair, open and transparent?
4. On February 6, 2025, OPO confirmed the complaint met the requirements of the *Procurement Ombudsman Regulations* (the Regulations) and it was considered filed.

Mandate

5. This review of complaint was conducted under the authority of paragraph 22.1(3)(b) of the *Department of Public Works and Government Services Act* and sections 7 to 14 of the Regulations.
6. Pursuant to subsection 9(2) of the Regulations, the Procurement Ombud requested DND provide all departmental records associated with the procurement and the award of the contract in question, as well as DND procurement policies and guidelines in effect at the time of the solicitation. The Procurement Ombud also requested the Complainant provide any additional information not submitted as part of the complaint.

7. The chronology of events and the findings in this report are based on the records provided by the Complainant and DND, as well as relevant publicly available information. The failure by either the Complainant or DND to disclose any relevant records or information could impact the findings of this report.

Chronology of Events

8. On November 22, 2024, DND issued a Request for Proposals (RFP) on the Government Electronic Tendering Service (GETS) site, CanadaBuys. The solicitation was open to eligible SA holders of PSPC's SAs for office seating and workspaces. Bidders were required to meet two mandatory criteria and submit their pricing. The bid with the lowest price and compliant to the mandatory criteria would be recommended for contract award. All work (delivery and installation) was to be completed by January 31, 2025.
9. On December 5, 2024 the bids were due, however the bid submission date was extended to December 11, 2024. DND received 3 bids, including the Complainant's.
10. On January 7, 2025, DND emailed the 3 bidders to request additional information regarding their bid. In the email, bidders were also asked to confirm if they could meet the new delivery date of March 13, 2025 for all requested items. The 3 bidders had until January 13th at 2:00 pm to provide the requested information.
11. By January 13, 2025, only 2 of the 3 bidders had responded to DND's request (one of which was the Complainant). The bidder who did not provide a response was deemed non-responsive.
12. On January 13, 2025, with respect to the new delivery date, the Complainant responded "Our lead times are approximately 6-10 weeks from the time the order is placed".
13. By January 20, 2025, the individual evaluations were completed. On January 21, 2025, DND awarded the contract to the other responsive bidder.
14. On January 27, 2025 a regret letter was sent to the Complainant, notifying them that their bid was non-compliant "as the delivery of goods could not be guaranteed before 13 March 2025".
15. On January 27, 2025, the Complainant responded to DND and stated their lead time was standard and asked DND to confirm that this was the basis for their disqualification.
16. On January 29, 2025, DND responded to the Complainant with a formal debrief email stating "Lead times of approximately 6-10 weeks does not confirm that the delivery date of 13 March can be met. There was no other reference, Ref B or Ref D, to confirm the 13 March 2025 timing. Therefore, the Mandatory Critical Criterion was not met because the

Vendor could not confirm that all the work would be completed in full by 13 March 2025.” As a note, “Ref B” referred to the Complainant’s technical bid and “Ref D” referred to the Complainant’s response to DND on January 13th.

17. On January 30, 2025, OPO received the written complaint.
18. On February 19, 2025, OPO advised DND and the Complainant that it launched a review of the complaint.

Analysis of Issues and Findings

Issue 1: Was mandatory technical criterion (M2) for the date of work completion unreasonable?

19. The Complainant stated:

“During evaluation on January 7th 2025, the department asked if the products in the solicitation can be delivered by March 13th 2025. Knowing that there is no guarantee if and when we would receive the contract and the finishes needed to place the order to start production (if we were awarded). We responded with "Our lead times are approximately 6-10 weeks from the time the order is placed". It is our understanding that for this reason we have been disqualified. Our response is a natural one in our industry where it is not uncommon to receive all necessary information to place an order sometimes one month from the time the contract has been awarded. Had that been the case, would we still be expected to deliver the product within a three week window? Would we then be considered to be in breach of contract if we could not meet the March 13th deadline even though we agreed to it? (standard lead times in this industry is between 6-10 weeks).”

20. In its response to OPO, DND stated that:

“[The Complainant] was identified as non compliant because they attached a condition to their proposal, a range for the delivery date whereas Canada had identified via email a new no later than delivery date of 13 March 2025 for the requirement. [The Complainant] failed to respond affirmatively that they would accept the revised no later than date. Instead [the Complainant] chose to offer a range of dates that extended beyond the 13 March date. This is not acceptable.

If [the Complainant] did not understand the email, they had an onus to seek clarification at that time. Instead, [the Complainant] made a business decision to provide a bid response that included a range of dates, which is a proposal with conditions. This is not a standard reply in a bid process as is stated by [the Complainant] . [The Complainant] raised no such concern in its original bid response, solicitation period ending 11 December 2024. At that time their bid was without conditions.

Canada has no obligation to further alter the bid process to allow a range of dates or extend the contract performance period to suit a single bidder. [The Complainant] was therefore declared non-compliant.

Given the relative low complexity of the requirement, bidders were expected to meet the 13 March timeline. Early in January the evaluation, selection and award process was well underway with award expected before end of January (it occurred Jan 21st). If a responsive supplier is awarded a contract and a delay is encountered by the supplier during the operational phase that is beyond their control, the reasons for the delay would be examined by the Crown who has the sole authority to revise a final delivery date and perhaps seek consideration. The reasons for the delay need to be acceptable to the Crown. The contract terms and conditions (T&Cs) address this matter.

Bidders are expected to price the requirement including cost drivers related to delivery and installation. The Crown cannot accept unilateral changes by bidders, such a tact would mean a successful bidder could choose to intentionally delay delivery and installation. They could bid one price then change their intended source of supply, post award, to find a alternate source of supply known to be less expensive but requiring far longer lead times. This would have the effect of increasing supplier margins by intentionally acting to delay delivery beyond the requirement defined in the RFP as priced by competitors. This is unacceptable as it undermines the fundamental underpinnings of a defined procurement process.”

Analysis—Issue 1

21. The [Directive on the Management of Procurement](#) (DMP) states the following regarding the development of evaluation criteria:

4.2 Business owners are responsible for the following:

[...]

4.2.3.4 Developing clear statements of work and technical evaluation criteria.

4.5 Contracting authorities are responsible for the following:

[...]

4.5.8 Limiting the number of mandatory technical criteria to those determined to be essential requirements in order to achieve the desired outcomes and ensure that no bid is unnecessarily disqualified.

22. The mandatory technical criterion M2 stated:

M2: Supplier must confirm that all work will be completed in full by 31 January 2025.

23. This criterion was later revised during the bid evaluation phase to require work be completed by March 13, 2025.
24. Based on the language of M2 (original or revised delivery date), it was an explicit and mandatory requirement for the supplier to confirm in their bid that the supply, delivery and installation of the office equipment would be completed by the delivery date specified in order to be found responsive to this criterion.
25. This complaint centers on the existence and reasonability of having a specified delivery date as a mandatory criterion given there was no commitment by the Department on when a contract award decision would be made. The Complainant contends their ability to commit to such a delivery date was impacted by the lead time they required to order the goods, which the Complainant would only do if and when awarded the contract. Without knowing the results of the contract award decision, the Complainant was unable to confirm the work would be completed by DND's desired delivery date.
26. Procuring entities (in this case, DND) are entitled to determine operational requirements, including delivery timelines, and develop mandatory evaluation criteria to reflect these needs provided this is done through a lens of reasonability.
27. In its May 2021 determination in *Luminaction Inc. v. PSPC* (PR-2020-084, paragraphs 59-60), the Canadian International Trade Tribunal (CITT) noted that procuring entities have "the discretion to frame the terms of an RFP in order to meet legitimate operational requirements, so long as that discretion is reasonably exercised. This extends to the prescribing of mandatory technical requirements for the goods and services being procured, including the delivery timelines...the government is not required to tailor its requirements to suit the circumstances of every prospective bidder, such as the delivery timelines...Otherwise, no product could ever be sourced on an urgent basis."
28. In its May 2016 determination in *Dominion Diving Inc. v. PSPC* (PR-2015-048, paragraph 49), the CITT stated "it is...incumbent upon a bidder that believes that a requirement is unreasonable, to take steps to seek relief..."
29. The RFP was published on CanadaBuys on November 22, 2024 with a closing date of December 5, 2024 that was later changed to December 11, 2024 and the date it specified for the office furniture to be delivered and installed was January 31, 2025 (approximately 7.5 weeks from the bid closing date). Then, by a new deadline of January 13, 2025, bidders were required to confirm they could meet the changed delivery and installation date of March 13, 2025 (approximately 8.5 weeks duration).
30. Meeting the criterion is binary and therefore, objective. Based on the low-complexity nature of the requirement, this timeline does not appear to be unreasonable and was not flagged as such by suppliers during the bid solicitation process. There was no evidence of

suppliers raising concerns to DND regarding the January 31 deadline so it cannot be concluded that DND was aware or should have known that bidders may experience difficulties sourcing the necessary products within that timeline or the revised March 13 timeline which was longer. OPO found no evidence to demonstrate that this requirement was not a legitimate operational requirement for DND.

31. Even if such concerns had been raised by suppliers, this would not necessarily mean that DND was required to change the delivery date – only that DND could have considered revisiting the date in light of a potentially narrowed competitive field or possibly reframing the criterion to stipulate the completion of work would be expected within a certain timeframe from contract award. While the latter strategy may have been considered preferable by some suppliers as it could help to support their sourcing strategies, ultimately, DND was responsible for establishing their requirements based on their operational needs.
32. This criterion, while permissible as an operational need, may not have been an effective means for DND in achieving the completion of work by the desired date. Firstly, to meet M2 as written, bidders only needed to confirm that the work would be completed by the future date set out in M2, not to actually the work by that date. Commitments to future expectations cannot be verified in advance during the evaluation process. Further, bidders who provided this confirmation would be deemed compliant to the criterion but this statement does not require any immediate evidence regarding their capability to deliver. Furthermore, actual delivery is an issue for the contract administration stage, not the contract award stage.
33. As well, this criterion as written may have also created challenges for suppliers due to factors beyond their control. For instance, DND could have awarded the contract on January 30th, and based on the language of the criterion, the delivery and installation would be required the next day (obviously an unrealistic expectation). However, more realistically in this scenario, departments may opt to simply change the delivery date once the contract is awarded. Changing a mandatory delivery date post award raises concerns about the fairness of the procurement process because the firm delivery date being a mandatory criterion could have disqualified otherwise qualified bidders or discouraged them from bidding at all when they would have bid had they known the revised delivery date.
34. For these reasons, departments are cautioned about incorporating firm delivery dates such as January 31 or March 13 in evaluation criteria, particularly in cases where the contract may not be awarded in a timely manner. In these instances, it would be preferable to state that delivery is required within X days of contract award.
35. For their part, suppliers are cautioned that they have a positive obligation to ask questions before bid closing if they have concerns. In its July 2014 determination in *StenoTran Services Inc. v. Court Administration Service (CAS)* (PR-2013-046, paragraph 64), the CITT stated “if

StenoTran had concerns regarding the viability of the requirements, it should have questioned CAS before submitting its bid”.

Finding—Issue 1

36. The Procurement Ombud found that the requirement in mandatory technical criterion M2 for bidders to confirm all work would be completed by a specific date was not unreasonable as it was binary and therefore objective, not impossible to meet and appears to reflect a legitimate operational requirement.

Issue 2: Did DND properly evaluate the Complainant’s proposal against mandatory technical criterion M2 and was the process used to amend M2 fair, open and transparent?

37. The DMP states the following regarding evaluation criteria during the solicitation and bid evaluation process:

4.3 Contracting authorities are responsible for the following:

4.3.1 Conducting procurements on behalf of the department or agency, and establishing contracts and contractual arrangements based on sound procurement principles, including fairness, openness and transparency to obtain best value.

Further,

4.5 Contracting authorities are responsible for the following:

[...]

4.5.7 Designing and conducting the bid evaluation process, financial assessment and due diligence.

38. The DND Procurement Administration Manual (PAM) states under section 3.3.9.8 that Contracting Authorities are responsible to ensure the Technical Authority (TA) “...evaluates all quotes received against the requirement and any evaluation criteria that were provided in the solicitation method, except for the financial evaluation.”
39. The DND PAM also states under section 3.3.4.5(b)(i) that for the evaluation of proposals for an RFP issued under an SA the TA “Completes the evaluation based on the published criteria in the supply arrangement and solicitation document.”
40. Further, with respect to managing questions and answers during the bid solicitation phase, the DND PAM states under section 7.3.6.2(c) “...Any information given to one supplier with respect to a proposed procurement must be provided to all suppliers in adequate time to

permit the suppliers to consider such information and respond to the solicitation.”

Analysis—Issue 2

41. The RFP was published on CanadaBuys on November 22, 2024 and included 2 mandatory technical criteria:

M1: Supplier must be able to supply and install all items requested.

M2: Supplier must confirm that all work will be completed in full by 31 January 2025.

42. As noted previously, the bid closing date was December 11, 2024 and 3 bids were received.
43. On January 7, 2025, the DND Contracting Authority emailed the 3 bidders requesting additional information and noted a new delivery date:

“The new required delivery date will be 13 March 2025. You must confirm that you can meet this date for all requested items.”

44. Of the 3 bidders, 1 bidder did not reply to the email and was therefore deemed non-responsive. The Complainant responded “Our lead times are approximately 6-10 weeks from the time the order is placed”, which did not confirm their ability to complete the work by the revised deadline of March 13, 2025, and they were therefore deemed non-compliant to mandatory criterion M2. The remaining bidder was deemed compliant to M2 and was awarded the contract.

45. In DND’s response to OPO with respect to this complaint, DND stated:

“[The Complainant] was identified as non compliant because they attached a condition to their proposal, a range for the delivery date whereas Canada had identified via email a new no later than delivery date of 13 March 2025 for the requirement. [The Complainant] failed to respond affirmatively that they would accept the revised no later than date. Instead [the Complainant] chose to offer a range of dates that extended beyond the 13 March date. This is not acceptable.”

46. The individual evaluations on file also referenced the Complainant’s response to the March 13, 2025 deadline and the Complainant’s confirmation that the required lead time would be “approximately 6-10 weeks” as the reason for its disqualification.
47. In its December 2015 decision in *Tektronix Canada Inc. v. PSPC* (PR-2015-041, paragraph 16), the CITT stated “When evaluating a bid, the government institution must ensure that the bid thoroughly and strictly complies with the mandatory requirements identified in the tender documents.” The CITT went on to say (in paragraph 17) “if the bid does not comply,

the government institution has no choice but to declare the bid non-compliant.” Therefore, the Complainant’s bid in response to the revised delivery date of March 13, 2025 failed to strictly meet M2 as revised, and the Department had no choice but to declare that bid non-compliant.

48. However, DND made the change to mandatory technical criterion M2 *after* bid closing on December 11, 2024. While it could have made the change via an amendment to the solicitation before bid closing, making the change after bid closing resulted in the creation of a new criterion which required the Department to cancel the solicitation, and issue a new solicitation to all qualified SA holders. In this case, changing criterion M2 after bid closing and advising only 3 qualified SA holders meant the process was not competed openly, and was unfair to other qualified SA holders who might have chosen to submit bids had they known about the new delivery date.
49. As noted by the CITT in the aforementioned Luminaction case (PR-2020-084, paragraph 49), “The objective of fair and transparent procurement is served by a process where the same rules apply uniformly to all bidders. The rules governing the tender are prescribed in advance, so that all prospective bidders are aware of them. This does not occur where the evaluation criteria are, for practical purposes, changed or rewritten by the evaluators after the tender has closed.”
50. Due to the estimated value, the procurement had to be posted on CanadaBuys so all SA holders meeting DND’s requirements were offered the opportunity to submit a bid. Suppliers who did not submit a bid due to the original delivery date of January 31, 2025 may have participated based on the new date of March 13, 2025 had that been the original delivery and install date.
51. To ensure the fairness of the competitive process, suppliers must be made aware of the criteria they are to be evaluated against and changes to mandatory criteria must only be made during the bid solicitation period and in a way that ensures all potential bidders are informed in a fair and transparent manner. This allows bidders to make informed decisions on whether or not to participate in the procurement process, helps to support their submission of responsive bids and ensures an even playing field for all bidders.

Finding—Issue 2

52. The Procurement Ombud found that DND did not properly evaluate the Complainant’s proposal against mandatory technical criterion M2 because the process followed by DND to change a mandatory criterion after bid closing did not meet the standards of fair, open and transparent. The new process (i.e., requiring strict compliance with a new delivery date after bid closing) and the reason for the change were not clearly and transparently

communicated to the existing bidders, and were not communicated to other qualified SA holders at all. While bidders may be asked for clarifications of their bids after bid closing, they cannot submit new information that had not been provided at bid closing. DND equally cannot request new information from the existing bidders after bid closing, and assess the new information through the lens of strict compliance to a newly created mandatory criterion.

53. While the Ombud acknowledges situations may occur after bid closing but before contract award that require modifications to essential elements of a project, it is critical in these circumstances to cancel the process and give all qualified SA holders an opportunity to bid based on the changed essential element. The new process should clearly and transparently explain the reason for the re-solicitation and highlight the specific change(s). Depending on the nature of the change(s), the Department may be able to shorten the period of the re-solicitation process to ensure timely delivery of the project. By following this methodology, the rules and expectations will be clear to the participants in the secondary process. Furthermore if the need for a change to an essential element is as a result of internal administrative delays, this circumstance could be avoided by altering the language of the mandatory criterion as suggested in Issue 1 above, and requiring a delivery date “X days from contract award”. This would ensure any departmental delays are not at the risk of bidders and would not require a re-solicitation as was the case in this specific circumstance.

Conclusion

54. Regarding Issue 1, the Procurement Ombud found that mandatory technical criterion (M2) for a date of completion (i.e., delivery date) was not unreasonable as it was binary and therefore objective, not impossible to meet, and appears to reflect a legitimate operational requirement.
55. Regarding Issue 2, the Procurement Ombud found that DND did not properly evaluate the Complainant’s proposal against mandatory technical criterion M2 because the process followed by DND to change a mandatory criterion after bid closing did not meet the standards of fair, open and transparent.

Compensation

56. In order to recommend the payment of compensation to the Complainant, subsection 13(2) of the Regulations requires the following:

“If a competitive process was held, the complainant must have submitted a bid in respect of the contract to which the complaint relates, unless it was prevented from doing so because of the actions of the contracting department.”

57. As a competitive process was held and the Complainant submitted a bid, the Ombud may recommend payment of compensation in accordance with subsection 13(1) of the Regulations.
58. At OPO's request, the Complainant provided the costs it incurred in preparing its bid in the amount of \$1,166.00.

Recommendation

59. In accordance with sub-paragraph 13(1)(b) of the Regulations, the Procurement Ombud recommends DND pay compensation to the Complainant in the amount of \$1,166.00, for costs incurred in preparing its bid.