

Office of the Procurement Ombud

Review of a Complaint:
Acquisition of Digital Product
Accessibility Auditing and Consulting
Professional Services by Employment
and Social Development Canada

August 2025



Government
of Canada

Office of the
Procurement Ombud

Gouvernement
du Canada

Bureau de l'ombud
de l'approvisionnement

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Cat. No.: P114-38/2025E-PDF

ISBN: 978-0-660-78540-0

This publication is also available electronically at: www.opo-boa.gc.ca

Table of contents

The complaint..... 4

Mandate 4

Chronology of events..... 4

Analysis of issues and findings..... 6

 Issue 1 – Did ESDC properly evaluate the Complainant’s bid and conduct an appropriate evaluation process? 6

 Analysis..... 8

 Finding – Issue 112

 Issue 2 – Did ESDC provide the Complainant with a proper debriefing?13

 Analysis.....14

 Finding – Issue 2.....17

Conclusion17

Compensation17

Recommendation18

The complaint

1. On February 21, 2025, the Office of the Procurement Ombud (OPO) received a written complaint from a Canadian supplier (the Complainant) regarding a contract awarded by Employment and Social Development Canada (ESDC). The contract was for the provision of Digital Product Accessibility Auditing and Consulting Services and was awarded under the Professional Services (ProServices) Supply Arrangement (SA). It was awarded on February 18, 2025, and was valued at \$CAD 9,450.00 (taxes excluded).
2. The complaint raised the 2 following issues:
 - Issue 1: Did ESDC properly evaluate the Complainant's bid and conduct an appropriate evaluation process?
 - Issue 2: Did ESDC provide the Complainant with a proper debriefing?
3. On February 27, 2025, OPO confirmed the complaint met the requirements of the [Procurement Ombudsman Regulations](#) (the Regulations) and it was considered filed.

Mandate

4. 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.
5. Pursuant to subsection 9(2) of the Regulations, the Procurement Ombud requested ESDC provide all Departmental records associated with the procurement and the award of the contract in question, as well as ESDC's 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 initial complaint.
6. ESDC requested the use of the expanded review process. OPO granted the request, and the expanded review process was used. In accordance with subsection 11(4) of the Regulations, the Government organization is given 25 working days to comment on the complaint. These comments are then shared with the Complainant, who then has 10 working days to respond to the comments. If the Complainant raises new arguments or evidence in its response, the Government organization then has another 10 working days to provide additional information.
7. The chronology of events and the findings in this report are based on the records provided to OPO by the Complainant and ESDC, as well as relevant publicly available information. The failure by either the Complainant or ESDC to disclose any relevant records or information could impact the findings of this report.

Chronology of events

8. On November 29, 2024, a Request for Information (RFI) was sent to the pre-qualified suppliers under the category 9.12 *Evaluation services consultant* of the ProServices Supply

Arrangement to determine whether the suppliers had expertise in the provision of digital product accessibility auditing and consulting services.

9. On December 5, 2024, the RFI closed, and ESDC received responses from 10 of the pre-qualified SA suppliers.
10. On December 18, 2024, the Request for Proposals (RFP) was sent to these 10 interested suppliers.
11. On January 8, 2025, the RFP closed, and 2 bids were received, including a bid from the Complainant.
12. On January 24, 2025, 3 ESDC evaluators completed the individual and consensus evaluations of the Complainant's bid. Per the consensus evaluation, ESDC determined that the Complainant's bid did not meet mandatory criteria M1 to M5. Specifically, ESDC determined that the date range listed for certain projects listed on the candidate's CV in response to M1 to M4 were unclear. Consequently, the evaluators were unable to determine exactly when the projects were performed and whether they were within the date range required for M1 to M4. Therefore, the bid was found to be non-compliant and ESDC did not proceed to further evaluate the 5 point-rated criteria.
13. On January 27, 2025, the Complainant received a regret letter from ESDC and a copy of the completed consensus evaluation.
14. On January 30, 2025, the Complainant requested a debriefing and ESDC accepted the request.
15. On February 7, 2025, a debriefing was held virtually. During the debriefing, the Complainant addressed ESDC's Consensus Evaluation results. The Complainant submitted a rebuttal note following the debriefing that summarized the issues addressed in the meeting.
16. On February 13, 2025, ESDC changed their initial evaluation result for criteria M1-M4 from 'not met' to 'met'.
17. On February 14, 2025, the Complainant received a second regret letter, stating that ESDC's evaluation team "reviewed the arguments and clarifications provided" and determined the Complainant's bid still did not meet all the mandatory criteria. The second regret letter did not indicate that ESDC had changed their initial evaluation result for M1-M4.
18. On February 18, 2025, the contract was awarded to the supplier identified as the winning bidder in the Complainant's first regret letter.
19. On February 21, 2025, the Complainant submitted a complaint to OPO.
20. On March 13, 2025, OPO advised both ESDC and the Complainant that it had launched a review of the complaint.

21. On May 12, 2025, ESDC provided OPO with its detailed response to the complaint and supporting documentation.
22. On May 29, 2025, OPO received the Complainant's response to ESDC's response.
23. On June 5, 2025, OPO received ESDC's final response.

Analysis of issues and findings

Issue 1 – Did ESDC properly evaluate the Complainant's bid and conduct an appropriate evaluation process?

24. The Complainant stated:

"[Our] bid for ESDC's Digital Product Accessibility Auditing and Consulting contract was rejected due to non-compliance with mandatory technical criteria (M1–M4, M5) [...]. The evaluation team cited insufficient evidence of 3+ years of WCAG 2.1/2.2 accessibility auditing experience (M1) and inconsistencies in demonstrating mobile platform testing (iOS/Android) in Project 5. Despite post-rejection clarifications submitted via Teams meeting, the evaluators upheld their decision, prompting [us] to pursue a complaint with the Office of the Procurement Ombudsman (OPO). [...]"

Criteria M1 (Experience Duration): The evaluators dismissed cumulative experience across 5 sub-projects (2016–2023) despite demonstrating that each sub-project included accessibility auditing activities meeting M1's requirements. The RFP allows aggregated experience, provided it totals 3 years within the last 5 years. M1 (Mobile Auditing Contradiction): The claim of a "contradiction" in Project 5 misinterprets the CV's reference to multi-platform expertise (desktop + mobile). Clarifications during the debrief were disregarded without justification. M5 (Implementation vs. Consulting): The evaluators conflated "implementation" with consulting services. [The proposed resource's] CV explicitly describes collaborative remediation support (e.g., advising teams on WCAG compliance), aligning with M5's scope."

25. The Department stated:

"For M1-M4, the evaluation team found that the information provided in the bid was unclear. Indeed, although the experience presented by the Complainant for all the projects at [Company name] occurred in 3 of the last 5 years, each individual project did not specify a start and end date. The absence of specific dates made it difficult to determine when exactly the work was done. For this reason, the experience at [Company name] was not considered by the evaluators. In consequence, the Complainant failed to reach the minimum of 3 years of experience within the last 5 years. During the debriefing, the Complainant explained that the 5 projects listed under the resource's experience at [Company name] had the same continuous time frame as they were worked on simultaneously from August 2016 to February 2023."

“Following the debriefing, ESDC decided to conduct a re-evaluation of the bid that would take into account the clarifications provided in the debriefing. Although the explanation provided for M1 -M4 seemed implausible (with some projects involving up to 16 responsibilities), ESDC evaluators gave the bidder the benefit of the doubt and agreed to reconsider their findings given that this information was included in the bid and subject to interpretation. Following that, ESDC revised their decision and found the bid to be compliant with M1- M4 requirements.”

“Regrading [sic] M5, upon initial evaluation of this criterion, ESDC’s evaluators found that the Complainant’s bid description was missing context on how accessibility-related experience was relevant to the cited projects or how the specific accessibility-related actions helped in the context of these projects. Referring to the tasks listed in the RFP, they found that although the bid specified a period for the projects and a brief description of the tasks performed, the bid lacked convincing details of how the experience of this project was relevant in relation to the SOW. Finally, on the inclusion of certain points regarding the implementation of accessibility audits in various projects, the evaluators agreed that M5 rather concerned support and assistance services, not the direct implementation of these audits.”

“The Complainant’s technical bid described experience related to the implementation of audits, however, the RFP required evidence of experience in supporting and assisting, which was not demonstrated. Furthermore, the Complainant’s rebuttal letter confirms that their bid only mentions implementation activities and would like for ESDC to read in and assume that the resource also assisted and supported the teams in implementing the recommendation of audit reports. The rebuttal letter states: “While [the Complainant’s resource’s] resume mentions implementation activities, these were part of his broader role in supporting teams during remediation efforts: For example, at [company X and company Y]., [the Complainant’s resource] provided technical guidance on implementing fixes based on his audit findings. This aligns with the SOW requirement to assist in remediation rather than solely performing implementation.” As due diligence, ESDC reviewed the resource CV once more and searched for details and examples of providing “guidance” but did not find any. the [sic] Complainant representations for “implementation” is simply not what was required by the SOW.”

“Despite re-evaluating the bid, M5 was still attributed a “Not Met” score given that the information provided by the Complainant at the debrief and in the rebuttal letter were not contained in their bid. Indeed, the Complainant’s explanations consist of additional information rather than clarifications and taking into account these explanations would have amounted to impermissible bid repair. In *R2Sonic, LLC*, the Tribunal summarized the scope for clarification as follows: “Clarifications must strictly refer or relate to a better understanding of the contents of the bid; they cannot take into account new information intended to form a substantive part of a bid. Prohibiting bidders from supplementing their proposals after bid closing ensures that all bidders are given a fair and equal opportunity in the bid evaluation process.” As it is the case here, accepting information provided outside the Complainant’s bid goes beyond what can be acceptable as a clarification.”

26. Following the receipt of this statement from ESDC with regard to a re-evaluation after the debriefing, the Complainant further stated:

“The fact that M1-M4 were re-evaluated and accepted is new information to us. This was actually our biggest concern, we just couldn’t see how our highly experienced resource didn’t meet these mandatories with the information presented in our bid submission, even after the debriefing conference. The fact that M5 was re-evaluated and still deemed non-compliant, with further rationale as to why, is also new information to us.”

Analysis

27. The Directive on the Management of Procurement (DMP; the Directive) 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.

...

[4.5.7](#) Designing and conducting the bid evaluation process, financial assessment and due diligence.

28. The Supply Manual includes the following related to the evaluation and selection of contractors:

[5.35 Evaluating the bids](#)

d. Bids must be evaluated in accordance with the evaluation criteria established in the bid solicitation. Even though the onus is on bidders to submit clear and well-organized bids, bids must be reviewed with diligence and thoroughness to ensure that no essential information is missed. The evaluators must not use criteria or factors not included in the bid solicitation or derive conclusions from information contained in bids that may prove wrong.

[5.40.1 Evaluation of technical mandatory criteria](#)

Mandatory criteria are assessed on a simple pass/fail basis. Bids that fail to meet any of the mandatory criteria will be considered non-responsive.

The reasons for declaring a bid non-responsive must be clearly documented by the contracting officer in the procurement file.

29. The Supply Manual also includes the following related to bid clarifications:

[5.3.0 Clarifications](#)

a. Only clarifications which do not change the substance or price of a bid may be requested and accepted. The request for clarifications and response must be in

writing. Any response, which leads to a substantial change in the bid is considered a bid repair and must not be considered in the bid evaluation. Pursuant to the [Canadian International Trade Tribunal](#) (CITT), a clarification is acceptable only if it is an explanation of some existing aspect of the bid that does not amount to a substantive revision or modification of the bid. Bidders cannot be allowed to repair their bid through a clarification process.

30. In its October 2016 decision in *R2Sonic, LLC. v. Department of Public Works and Government Services* (PR-2016-040 at Paragraph 19), the Canadian International Trade Tribunal (CITT) stated: “The Tribunal has consistently held that bidders are fully responsible for demonstrating compliance with all mandatory requirements of an RFP.... Government entities may choose to seek clarifications about the contents of a bid before it is evaluated. Those clarifications must strictly refer or relate to a better understanding of the contents of a bid; they cannot take into account new information intended to form a substantive part of the bid.” In its March 2022 decision in *Eolyss Solutions Inc.* (PR-2021-084 at Paragraph 30) the CITT stated: “It is incumbent upon bidders to exercise due diligence in the preparation of their proposals to ensure that they are compliant with all of the essential elements of a solicitation and that the information provided clearly demonstrates compliance with the established requirements.”

Evaluation and re-evaluation of the bid

31. ESDC issued the RFP under the ProServices Supply Arrangement—a mandatory, government-wide method of supply for the provision of certain professional services below the Canada-Korea Free Trade Agreement threshold, currently \$100,000. The evaluation procedures were described in section 4.1:

“4.1 Evaluation Procedures a) Bids will be assessed in accordance with the entire requirement of the bid solicitation including the technical and financial evaluation criteria.”

32. The technical evaluation contained 6 mandatory criteria:

M1: The proposed resource (1 resource) must present a CV that clearly demonstrates a minimum of 3 years of experience within the last 5 years in conducting accessibility audits against WCAG standards (either 2.1 or 2.2) on a wide range of digital products including web, mobile (iOS and Android) and desktop applications (PC and Mac). The CV should specify the dates of relevant experience, using the format of month and year for each position or project.

M2: The proposed resource must present a CV that clearly demonstrates a minimum of 3 years of experience within the last 5 years in combining manual, assistive technology, and automated testing while performing accessibility audits. The CV should specify the dates of relevant experience, using the format of month and year for each position or project.

M3: The proposed resource must present a CV that clearly demonstrates a minimum of 3 years of experience within the last 5 years in providing accessibility-related and

inclusive design consulting services to digital teams. The CV should specify the dates of relevant experience, using the format of month and year for each position or project.

M4: The proposed resource must present a CV that clearly demonstrates a minimum of 3 years of experience within the last 5 years in providing accessibility-related training to digital teams. The CV should specify the dates of relevant experience, using the format of month and year for each position or training.

M5: The proposed resource must show evidence of experience in projects similar to those outlined in the Statement of Work, completed within the last 5 years. This should be supported by projects from previous clients. As a minimum, the proposed resource must provide the following details for each relevant project: a) Title of Project b) Period of the Project (month and year of the beginning and end) c) Client d) Brief description of Project.

M6: The proposed resource must present proof(s) of accessibility-related certification(s) (e.g., CPACC, WAS, CPWA from IAAP).

33. On January 24, 2025, the Complainant's bid was evaluated individually by each member of the evaluation team. All 3 evaluators determined that the Complainant's bid did not meet mandatory requirements M1, M2, M3, M4 and M5. The bid was found to be compliant on M6. Later that same day, the ESDC evaluation team made its final determination through a consensus evaluation of the bid.
34. As indicated above, M1-M4 required a minimum of 3 years experience within the last 5 years in order to be considered compliant. Similarly, M5 required the bidder to have obtained the requested experience within the last 5 years.
35. The Complainant submitted their bid on January 8, 2025. Therefore, to meet M1-M4, the proposed resource would have been required to obtain the experience between January 8, 2020, and January 8, 2025, in order to meet the required minimum of 3 years experience in the last 5 years.
36. The project/experience at issue in M1-M4 is at [Company Name] from August 2016 – February 2023. The Complainant listed the details of 5 projects associated with [Company Name] in their bid.
37. In the Complainant's bid, there are no dates associated with any of the 5 projects listed at [Company Name]. Instead, the Complainant listed an overall date (August 2016- February 2023) indicating the resource's time with [Company Name]. To meet the mandatory criteria, only experience gained between January 2020 and February 2023 at [Company Name] could be applicable because the remainder (prior to January 2020) would fall outside of the minimum of 3 years' experience in the last 5 years requirement.
38. In their initial evaluation of M1-M4, ESDC said, "it is unclear that the relevant experience occurred in 3 of the last 5 years as the date range of some experience shows between August 2016 and February 2023". As a result, ESDC did not count the experience at [Company Name], and thus the bid was found to be non-compliant.

39. On January 27, 2025, ESDC sent a regret letter to the Complainant, which stated, “...the evaluating team determined that your bid did not comply with all the mandatory requirements of the solicitation. Please see the attached Consensus Evaluation Form for details. As a result of finding your bid to be non-responsive, your bid was disqualified and Canada did not proceed with your evaluation and did not determine a technical score for your bid.”

The consensus evaluation results were included as an attachment to the regret letter.

40. The RFP offered bidders an opportunity for a debriefing in writing, by telephone or in person, provided it was requested within 15 working days from receipt of the results of the bid solicitation process.
41. On January 30, 2025, the Complainant requested a debriefing, which was subsequently held virtually on February 7, 2025.
42. During the debriefing, the results of the consensus evaluation were discussed. In their response to OPO, ESDC stated that “the Complainant was given the opportunity to present their clarifications, and by the same occasion, attempted to demonstrate how their bid met the mandatory technical criteria of the RFP.” The Complainant explained to ESDC in the debriefing that “the 5 projects listed under the resource’s experience at [Company Name] had the same time frame as they were worked on simultaneously from August 2016 to February 2023.”
43. Following the debriefing, the Complainant emailed ESDC further clarification, stating that, for M1-M4, “the time frames for indicated sub-projects aren’t [sic] provided ([the proposed resource] worked all of them over the interval)...The specific sub-project timings (even if they weren’t for the entire interval) become irrelevant as each of them covers the requirement. We would use this as our basis of appeal for M1-M4.”
44. At some point after the debriefing, ESDC stated that it “decided to conduct a re-evaluation of the Complainant’s bid that would take into account clarifications.” ESDC further stated that “the explanation provided for M1 – M4 seemed implausible” but that “evaluators gave the Complainant the benefit of the doubt and agreed to reconsider their findings given that this information was included in the bid and subject to interpretation.” Regarding M5, ESDC stated that it “did not follow through with the Complainant’s explanation as it would amount to bid repair since ESDC was unable to find in the bid evidence of experience alleged by the Complainant during the debriefing.”
45. ESDC provided OPO with a copy of the original consensus evaluation grid, which included comment boxes dated February 12, 2025, noting that for M5, ESDC evaluators stated that “Following the debrief session, ESDC/[Branch] looked for any mention of “providing guidance” or “guidance” in the resume and could not find any. This is not a clarification but an addition to the initial bid. The evaluators agree that the experience shown in the bid still misses critical tasks included in the statement of work as stated in the initial justification provided.”

46. Regarding the evaluation of bids, in its September 2014 decision in *CAE Inc. v. Public Works and Government Services PR – 2014 – 007*, the CITT stated: “[...] the Tribunal has accorded a large measure of deference to evaluators in their evaluation of proposals. It has stated that a government entity’s determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether the Tribunal itself finds that explanation compelling. Conversely, the Tribunal has been clear that it will find an evaluation to be unreasonable and will substitute its judgment for that of the evaluators when the evaluators have not applied themselves in evaluating a bidder’s proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.”

Finding – Issue 1

47. Section 12(2) of the Regulations states:

“The Procurement Ombudsman shall not substitute his or her opinion for the judgment of the persons involved in the acquisition process for the contract in relation to the assessment of any bid, unless there is insufficient written evidence to support that assessment or the assessment is unreasonable.”

48. The Procurement Ombud found sufficient written evidence to support the initial evaluation conducted by ESDC and found the initial assessment to be reasonable and properly evaluated. The procurement file was well documented and included the RFP, bids, the individual and consensus evaluations, and resulting contract.

49. The Procurement Ombud reached this finding based on a balancing of the obligations of ESDC, the Complainant and the required deference afforded to the Department based on the standard set forth in Paragraph 47. In simpler terms, the obligation is on the Complainant to submit a clear bid, there is no obligation on ESDC to clarify any ambiguous aspects of the Complainant’s bid and the Procurement Ombud cannot substitute his opinion unless specific criteria are met. Because ESDC’s initial evaluation was well documented and the Complainant’s bid included some ambiguity, the Ombud finds the initial evaluation of the Complainant’s proposal was reasonable. The Ombud does note, however, that while ESDC was under no obligation to seek clarification on the Complainant’s bid, had it done so before finalizing the initial evaluation, many of the issues that form the basis of the complaint could have been avoided.

50. While the Procurement Ombud found the initial evaluation reasonable, he did not find the process followed for the secondary evaluation to be reasonable. ESDC decided to conduct a re-evaluation of the bid that would take into account information provided after the initial evaluation was completed, as part of the debrief process. In its response to the complaint, ESDC advised OPO that: “Although the explanation provided for M1 - M4 seemed implausible, ESDC evaluators gave the Complainant the benefit of the doubt and agreed to

reconsider their findings given that this information was included in the bid and subject to interpretation.”

51. ESDC conducted a debrief process where additional information was provided by the Complainant that caused ESDC to reconsider the results of their initial evaluation of M1-M5. The timing of the debrief and the additional information that was shared was not contemplated as a step in the evaluation process and therefore lacked transparency around the process and outcome. The Complainant had no way of knowing that the debrief could result in a re-evaluation of their bid and may not have provided information in-line with this possible outcome. The problem was then compounded by the second regret letter which did not transparently disclose the fact that a re-evaluation had occurred and the associated results.
52. It appears that ESDC conducted a re-evaluation not based on the discovery of an error in its initial evaluation, but rather as a means of appeasing the Complainant following the debriefing. If an error had been discovered, conducting a re-evaluation would have been the correct and appropriate course of action. The decision to conduct a re-evaluation in this case without sound logic or any clear parameters goes against the principles of fairness in the DMP and therefore was unreasonable.
53. OPO also observed problems with the documentation of the re-evaluation and the subsequent actions stemming from it. It is unclear which of the 3 initial evaluators participated in the re-evaluation as there are no signed individual or consensus evaluations on file with the re-evaluation results. Rather, the discussion of a re-evaluation and its subsequent results were imbedded within a document summarizing the discussions held during the debriefing meeting on February 7, 2025. On that same day, ESDC advised the Complainant that the department would contact them in the upcoming days regarding their decision. The second regret letter did not make reference to the fact that ESDC had conducted a re-evaluation of the bid, stating only that “the evaluation team has reviewed the arguments and clarifications provided. After careful consideration, we regret to inform you that the evaluation team has determined that your bid still does not meet all of the mandatory criteria required for this process.”
54. Therefore while ESDC followed an appropriate evaluation process in its initial review of the Complainant’s bid, it did not follow an appropriate evaluation process in the re-evaluation of the Complainant’s bid.

Issue 2 – Did ESDC provide the Complainant with a proper debriefing?

55. The Complainant stated:

“The evaluation team denied [our] request to record the debrief meeting, violating transparency principles outlined in procurement guidelines. No written rationale was provided for rejecting clarifications about overlapping project timelines or mobile auditing responsibilities following the debrief meeting” [...] The evaluation team failed to substantiate how [our] clarifications failed to address gaps, violating CanadaBuys’ requirement for transparent, evidence-based evaluations. Section 4.10.20.5 of the

Supply Manual, mandates clear communication of evaluation methodologies. There is an absence of a recorded debrief and insufficient feedback. We are requesting the OPO to investigate procedural irregularities, including unfair treatment during bid evaluations.”

56. In response to the letter OPO received from ESDC, the Complainant further stated:

“To the point “the purpose of debriefing is to provide the bidder sufficient information to fully understand the reason why the proposal is rejected” - this understanding was not achieved as is evidenced by the fact that further details on the re-evaluation was M1-M5 was never provided (i.e., [we] still didn’t understand why M1-M5 were rejected).

57. The Department stated:

“In the regret letter dated January 27th, ESDC not only informed the Complainant that they were unsuccessful but also shared, prior to the request for a debriefing, the Consensus Evaluation Form which contains details as to why the Complainant did not meet all the mandatory requirements, and ultimately why their proposal was not selected. Following the Complainant’s request for an in-person debriefing, ESDC conducted a debriefing with them on February 7, 2025. During the debrief, ESDC covered the reasons why the proposal did not meet all the mandatory requirements and allowed the Complainant to provide clarifications on the deficiencies raised by ESDC. The facts demonstrate that the Complainant had sufficient information in the regret letter and during the debrief to be able to understand the evaluation rationale in addition to being afforded a chance to provide clarifications to address the grounds for rejection presented by ESDC. Case in point, the Complainant provided a detailed rebuttal for each deficiency raised in the Consensus Evaluation Form and reviewed at the debrief.”

“In both allegations of procedural fairness, the Complainant is attempting to unduly expand the scope ESDC’s obligation to debrief. Indeed, both the debrief clause included in the RFP and in the regret letter do not include any mention of the possibility of recording meetings. Imposing such an obligation would exceed the debrief obligation.

Analysis

58. The DMP states the following regarding debriefing procedures:

[4.16](#) Contracting authorities are responsible for the following:

- 4.16.3 Ensuring that bidders who request a debriefing receive one in a timely manner after a contract has been awarded; and
- 4.16.4 Dealing with bidder and contractor disputes fairly and promptly.

59. Chapter 7.40 of PSPC’s Supply Manual states the following regarding debriefings:

a. Debriefing

- i. The purpose of a debriefing is to explain to unsuccessful bidders/offerors/suppliers why their bid/offer/arrangement was not accepted, allowing them to improve their future documents. A debriefing demonstrates the fairness, openness, and transparency of the federal government contracting process.

60. The RFP stated the following with regard to debriefing procedures:

1.6 Debriefings

Bidders may request a debriefing on the results of the bid solicitation process. Bidders should make the request to the Contracting Authority within 15 working days from receipt of the results of the bid solicitation process. The debriefing may be in writing, by telephone or in person.

Request for a recorded debriefing

61. With regard to the allegation that the denial of the request to record the debriefing meeting violated transparency principles, OPO finds that ESDC made considerable efforts to ensure transparency in this procurement process and did not violate this fundamental procurement principle. ESDC ensured timely responses and action when the Complainant raised their concerns. This is evidenced by the fact that ESDC provided the consensus evaluation, 2 regret letters and a debriefing meeting to the Complainant.

62. In accordance with the DMP, debriefings should be provided to unsuccessful bidders in a timely manner after a contract has been awarded. There is no specific requirement for departments to allow bidders to record a debriefing meeting. ESDC could have allowed the debriefing to have been recorded enhancing the transparency of the process but was under no obligation to do so.

Debriefings

63. In order to determine whether the Complainant's received a proper debriefing, OPO must consider all debriefing instances conducted by ESDC with the Complainant in this procurement process.

64. On January 27, 2025, ESDC sent the first regret letter to the Complainant. OPO reviewed the first regret letter, which advised the Complainant "...As indicated in the solicitation, a bid was required to meet each and every mandatory requirement. Unfortunately, the evaluating team determined that your bid did not comply with all the mandatory requirements of the solicitation. [...]. As a result of finding your bid to be non-responsive, your bid was disqualified and Canada did not proceed with your evaluation and did not determine a technical score for your bid." ESDC also provided the completed consensus evaluation as an attachment to the regret letter.

65. OPO acknowledges that ESDC did provide a debriefing via its January 27, 2025, "regret" email, which advised the Complainant: (a) its bid did not meet the mandatory technical requirements; (b) which company was to be awarded the contract and at what price; and (c) a debrief may be provided in writing.

66. As previously noted, following the receipt of that letter, the Complainant requested a debriefing meeting which was granted and held on February 7, 2025. As a result of the debriefing meeting, the Complainant submitted a detailed rebuttal document to further clarify where information was contained within their bid.

67. On February 14, 2025, ESDC sent the second regret letter to the Complainant. OPO reviewed the second regret letter, which further advised the Complainant "... Following our debriefing session (on February 7, 2025), the evaluation team has reviewed the arguments and clarifications provided. After careful consideration, we regret to inform you that the evaluation team has determined that your bid still does not meet all of the mandatory criteria required for this process. We genuinely appreciate the effort and time you invested in preparing your submission. While your bid was carefully considered, we must adhere to the established criteria and process requirements."
68. According to the Complainant's response to ESDC's response to this complaint, they noted that they had not been aware of ESDC's decision to conduct a re-evaluation of the bid and the ultimate change towards compliance for M1-M4.
69. The information contained within the February 14, 2025, regret letter lacked clarity with regard to whether another evaluation took place. The second regret letter only mentions that ESDC reviewed the arguments and clarifications provided, but did not explicitly mention that a re-evaluation took place nor did they share the outcome of the re-evaluation with any specificity. Therefore, it was reasonable for the Complainant to note through their correspondence with OPO that they had not been made aware of a re-evaluation.
70. Overall, OPO observed 2 major issues with regard to the timing and subject matter of the debriefings.
71. First, it is unclear why ESDC sent the regret letters and proceeded with a debriefing meeting prior to contract award. The contract was awarded on February 18, 2025. The timing of the first regret letter, debriefing meeting and second regret letter occurred from January 27, 2025 – February 14, 2025, inclusively. As stipulated in the DMP, contracting authorities are responsible for ensuring that bidders who request a debriefing receive one in a timely manner after a contract has been awarded.
72. Debriefings must be held after contract award as their purpose is to provide information on the results of the solicitation process. By conducting a debriefing before the contract was awarded, ESDC added confusion to the purpose and possible outcomes from the debriefing.
73. Secondly, ESDC stated that at the February 7, 2025, debriefing, "the Complainant was given the opportunity to present their clarifications and by the same occasion, attempted to demonstrate how their bid met the mandatory technical criteria of the RFP." ESDC further stated in the same correspondence that "The CITT has stated numerous times that the purpose of debriefing is to provide the bidder sufficient information to fully understand the reason why the proposal is rejected."
74. These 2 statements set out 2 different expectations for the purpose of the debriefing. Although ESDC confirmed that "During the debrief, ESDC covered the reasons why the proposal did not meet all the mandatory requirement [sic]", the Department also "allowed the Complainant to provide clarifications on the deficiencies raised by ESDC".
75. Providing a bidder with information on why their bid was unsuccessful is not the same as offering that bidder an opportunity to clarify their bid. By offering the opportunity to clarify

their bid, ESDC implied to the Complainant that there was still an opportunity to be considered as part of the selection process even though the successful supplier had already been identified.

76. As stated in the Supply Manual, the purpose of the debriefing is to “explain to unsuccessful bidders/offerors/suppliers why their bid/offer/arrangement was not accepted, allowing them to improve their future documents”, implying that this is a forward-looking process. This is why debriefings are to occur after contract award, since the intention is for bidders to be able to improve their documentation for future procurement processes.

Finding – Issue 2

77. The Procurement Ombud finds that by combining the debriefing with an opportunity to clarify their bid, ESDC inadvertently misled the Complainant about the purpose of the debrief and what could result from it.
78. Furthermore, the Procurement Ombud finds that the second regret letter, sent to the Complainant on February 15, 2025, after ESDC re-evaluated the bid, was lacking in required information. The second regret letter failed to provide the Complainant clarity as to why its bid was still considered unsuccessful. The second regret letter did not indicate that (1) a re-evaluation had been conducted, (2) how M1-M4 were now considered “met” and (3) that M5 was still considered “not met”. More detailed information as to why the evaluators revised their evaluations for M1-M4, as well as why the additional information provided by the Complainant regarding M5 could not be considered, would have assisted the Complainant in understanding the deficiencies in their bid to better assist them in preparing future proposals.
79. Overall, the Procurement Ombud finds that ESDC was under no obligation to allow a recording of the debrief meeting, that ESDC wrongfully provided a debriefing prior to the award of the contract, and improperly used information obtained in the debriefing meeting to trigger a re-evaluation of the Complainant’s bid.

Conclusion

80. The Procurement Ombud found partial merit in the first issue raised by the Complainant. Although the initial evaluation conducted by ESDC was done properly and was reasonable; the re-evaluation conducted following the debriefing was unreasonable.
81. The Procurement Ombud found merit in the second issue raised by the Complainant and finds that ESDC did not provide the Complainant with a proper debriefing. The timing and subject matter of the debriefings were problematic and lacked clarity.

Compensation

82. Given the above, the Procurement Ombud recommends ESDC compensate the Complainant for the costs it incurred in preparing its proposal. The Complainant expended time and effort to respond to the solicitation document, with the expectation of participating in a fair and transparent process where its proposal would be properly evaluated.

83. 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.”

84. As a competitive process was held and the Complainant submitted a bid, the Procurement Ombud may recommend payment of compensation in accordance with the Regulations.

85. As the Complainant should not have been awarded the contract, the Procurement Ombud cannot recommend payment of compensation based on lost profits. However based on the Ombud’s finding in Issue 1, the complainant is entitled to be compensated for its bid costs associated with its participation in the solicitation process.

86. At OPO’s request, the Complainant provided the costs it incurred to prepare and submit its bid, in the amount of \$945.00.

Recommendation

87. In accordance with sub-paragraph 13(1) of the Regulations, the Procurement Ombud recommends ESDC pay compensation to the Complainant in the amount of \$945.00 for costs incurred in preparing its bid.