

# Office of the Procurement Ombud

“Bait and Switch”:

Procurement Practice Review of  
Replacement Resources in  
Professional Services Contracts

September 2025



Government  
of Canada

Office of the  
Procurement Ombud

Gouvernement  
du Canada

Bureau de l'ombud  
de l'approvisionnement

Canada

**OFFICE OF THE PROCUREMENT OMBUD**

400-410 Laurier Avenue  
West Ottawa, ON K1R 1B7

Toll-free: 1-866-734-5169

Teletypewriter (Toll-free for hearing-impaired):1-800-926-9105

Email: [ombudsman@opo-boa.gc.ca](mailto:ombudsman@opo-boa.gc.ca)

Cat. No.: P114-41/2025E-PDF

ISBN: 978-0-660-79012-1

This publication is also available electronically at: [www.opo-boa.gc.ca](http://www.opo-boa.gc.ca)

## Table of Contents

–	
I. Background.....	2
II. Context .....	2
III. Objective and Scope .....	4
IV. Approach .....	5
V. Policy Overview .....	6
VI. Results .....	7
LOE 1: Evaluation criteria and selection plans were established in accordance with applicable laws, regulations and policies .....	7
LOE 2: Evaluations of original resources proposed in the bid were conducted in accordance with the solicitation .....	13
LOE 3: Evaluations of replacement/task authorization (TA) resources were conducted in accordance with the contract.....	14
LOE 4: Practices related to resourcing were conducted in accordance with the arrangement between PSPC and client departments .....	21
VII. Conclusion.....	31
VIII. Organizational Responses .....	33
IX. Acknowledgment .....	36
Annex I.....	37
Appendix A – PSPC Master Level User Arrangement 2024 .....	42

## I. Background

1. On January 31, 2024, the Procurement Ombud appeared before the House of Commons Standing Committee on Government Operations and Estimates (OGGO) to discuss the results of his review of procurement practices of the Canada Border Services Agency (CBSA), Public Services and Procurement Canada (PSPC) and Shared Services Canada (SSC) pertaining to contracts associated with the creation, implementation or maintenance of the ArriveCAN application. One area of the report that was of particular interest to committee members was the finding that in 76% of applicable contracts reviewed, some or all of the resources proposed by the successful supplier in their bid did not perform any work on the contract. This practice was described by the Procurement Ombud as “bait and switch”.

2. During this appearance, the Chair of OGGO noted the Procurement Ombud alluded to bait and switch being a larger problem in federal procurement and asked if more work needed to be done to study the prevalence of this practice. The Procurement Ombud acknowledged that additional work looking into the issue was likely required.

3. In addition to the issue of bait and switch, reviews into the ArriveCAN contracts highlighted other issues. In the report from the Office of the Auditor General (OAG), an instance was identified where a supplier was involved in developing the requirements for a contract they were eventually awarded. Moreover, an OGGO Committee member wrote to the Procurement Ombud on February 14, 2024 and requested the launch of a review be considered focusing on the OAG’s finding.

4. On September 24, 2024, after considering available information and determining there were reasonable grounds to do so, as required by section 4(1) of the *Procurement Ombudsman Regulations*, the Procurement Ombud launched a review to examine the replacement of resources in professional services contracts in order to assess their fairness and transparency and their compliance with legislative, regulatory, policy, and procedural requirements. The review also examines the fairness of supplier involvement in the development of departments’ operational requirements.

5. This procurement practice review (PPR) was conducted in accordance with paragraph 22.1(3)(a) of the *Department of Public Works and Government Services Act*, which gives the Procurement Ombud the authority to review the procurement practices of departments to assess their fairness, openness and transparency, and to make recommendations for the improvement of those practices.

## II. Context

6. Professional services are expert services provided by individuals or companies with specialized knowledge or skills in Information Technology (IT) and non-IT fields. The Government of Canada procures professional services when capacity with the required knowledge or skills is not available within the public service, or when it needs support for a specific project or period of time.

7. With certain exceptions, if a federal department, agency or Crown corporation (“client”) needs to procure professional services, those services must be procured using PSPC’s mandatory methods of supply including the Task-Based Informatics Professional Services (TBIPS) supply arrangement, and the Task and Solutions Professional Services (TSPS) supply arrangement. If authorized to do so (i.e., are “identified users” for the requisite method of supply), the client can use PSPC’s mandatory method of supply themselves on their own behalf. These methods of supply provide access to pre-qualified suppliers who provide these required services. To use these methods of supply the clients must also have signed a Master Level User Arrangement (MLUA) with PSPC. This arrangement outlines the respective responsibilities of PSPC, clients and Contracting Authorities when utilizing these methods of supply.

8. While there are many methods of supply for professional services, this review examined procurements and contracts issued and awarded under the mandatory TBIPS supply arrangement (for IT requirements) and the TSPS supply arrangement (for non-IT requirements).<sup>1</sup> TSPS consists of 2 methods of supply – task-based, and solutions-based. Respecting TSPS, this review focused only on procurements and contracts issued and awarded under the TSPS task-based supply arrangement as these contracts are typically awarded based on the qualifications and experience of specific individuals proposed, and not the TSPS solutions-based supply arrangement that are awarded based on the supplier’s approach to delivering desired outcomes.

9. In a “task-based” requirement, the government defines the specific tasks the Contractor must perform and provides detailed instructions about how the work is to be completed. This differs from solutions-based requirements in which the government defines the problem or desired outcome and the Contractor proposes and delivers the best way to achieve it.

10. In contracting for professional services, the term bait and switch refers to when a supplier proposes highly qualified individuals in their bid to increase their chance of winning the contract, but after being awarded the contract, they replace those proposed individuals with different, often less qualified personnel (i.e., replacement resources). This tactic is deceptive because the government selects the supplier, at least in part, based on the superior skills and experience of the proposed resources. If these resources are ultimately not provided to perform the work, the government may not receive the knowledge, skills, or quality of service it expected or paid for. This can call into question whether the winning supplier submitted the bid representing best value to the government or if another supplier should have won the contract. Bait and switch tactics can be considered a violation of procurement rules, or possibly fraud, especially if the supplier never intended to use the resources they originally proposed.

11. Though bait and switch involves the replacement of resources, the replacement of resources alone does not constitute bait and switch. It is not unusual, or necessarily improper, for resources proposed in the bid to be replaced during the contract. It is not possible for suppliers to guarantee the availability of a specific individual throughout the entire life of a

---

<sup>1</sup> A supply arrangement is a non-binding arrangement between Canada and a pre-qualified supplier that allows departments and agencies to award contracts and solicit bids from a pool of pre-qualified suppliers for specific requirements within the scope of the supply arrangement. The intent of a supply arrangement is to establish a framework to permit expeditious processing of individual bid solicitations, which result in legally binding contracts for the goods and services described in those bids.

contract because of real-world, practical factors beyond the supplier's control. For example, a resource may resign from their employment with the supplier or leave the workforce for personal or health reasons. It is even more likely that a Contractor will need to replace a resource if the contract spans several years, as is often the case with government contracts. The government may also request the replacement of a resource if their performance is not satisfactory. The terms and conditions of most government contracts detail procedures to be followed for managing the replacement of resources in order to maintain contract performance and fairness of the procurement process. As well, significant delays on the part of the government in awarding the contract can result in the unavailability of resources as they are not secured indefinitely by the supplier.

12. Concerns related to bait and switch in federal government contracting are not unfamiliar to industry or the government. OPO has heard from industry that the procurement process takes too long and as a result, some suppliers will propose their best resources to win the contract knowing they will be unavailable once work is to be performed. As well, OPO has heard concerns that resources may be proposed in a supplier's bid without that supplier having obtained the resource's permission to do so. In both of these scenarios, suppliers will intentionally replace these highly-qualified resources with other less qualified individuals once they've been awarded the contract. PSPC, the central purchaser and provider of common services to other federal departments and agencies, identified the risk that this tactic could be used by suppliers. In PSPC's response to OPO's finding that proposed resources did not perform any work under the contracts in the PPR of ArriveCAN-related contracts, PSPC noted that this "validates an existing concern at PSPC."

13. PSPC has made various changes to how government departments are to use certain professional services methods of supply (including TBIPS and TSPS). On November 28, 2023, these changes came into effect for contracts awarded by PSPC under the TBIPS, TSPS and Solutions-Based Informatics Professional Services (SBIPS) methods of supply. As of March 1, 2024, the MLUAs with departments were rescinded, and in order to maintain their access to these methods of supply, client departments were required to sign a revised MLUA. These revisions were aimed at promoting the use of corporate capability criteria when selecting a supplier based on best value, in lieu of evaluating the qualifications of resources. These changes made to the MLUA will be discussed in greater detail later in this report.

### III. Objective and Scope

14. This review was undertaken to determine whether procurement practices pertaining to the replacement of resources were conducted in a fair and transparent manner. To make this determination, OPO examined whether these practices were consistent with Canada's obligations under national and international trade agreements, the *Financial Administration Act* and the regulations made under it, the Directive on the Management of Procurement (DMP) and, where applicable, organizational policies and guidelines.

15. The objective of this review was supported by the following 4 lines of enquiry (LOE):

**LOE 1:** Evaluation criteria and selection plans were established in accordance with applicable laws, regulations and policies.

- LOE 2:** Evaluations of original resources proposed in the bid were conducted in accordance with the solicitation.
- LOE 3:** Evaluations of replacement/task authorization (TA) resources were conducted in accordance with the contract.
- LOE 4:** Practices related to resourcing were conducted in accordance with the arrangement between PSPC and client departments.

16. The scope of this review included competitive procurements and contracts issued and awarded under the TBIPS and TSPS (task-based) methods of supply during the period of May 13, 2022 to October 31, 2024. OPO's review of LOEs 1 through 3 consisted of an assessment of procurement and contracting files for contracts awarded between May 13, 2022 and November 27, 2023 (i.e., when terms of the former MLUA applied). The former MLUA permitted the evaluation of resource qualifications for the purpose of selecting the best-value supplier. In all files reviewed for contracts awarded during this period, the evaluation of resource qualifications was a factor in the bid selection process. OPO's review of LOE 4 consisted of an assessment of solicitations released after March 1, 2024, when PSPC's revised version of the MLUA applied. The revised MLUA discouraged this evaluation practice for task authorization<sup>2</sup>-based contracts for multiple resources. All files reviewed under LOE 4 fit this description.

17. The following organizations were selected for review based on a consideration of the value and volume of their procurement activities under the TBIPS and TSPS (task-based) methods of supply. These departments are:

1. Employment and Social Development Canada (ESDC)
2. Global Affairs Canada (GAC)
3. Immigration, Refugees and Citizenship Canada (IRCC)
4. National Defence (DND)
5. Shared Services Canada (SSC)

PSPC was also included in this review due to its role as a central purchasing agent.

## IV. Approach

18. Based on the contracting data provided by the 5 departments, OPO selected 24 procurements for review. Of these, OPO reviewed the procurement and contracting files for 17 procurements (LOEs 1-3) and the solicitation documents for 7 procurements (LOE 4 **only**). The judgemental sample was developed with consideration to factors including materiality and risk. The risk of selection bias was minimized through the selection of individual files meeting these pre-established factors.

---

<sup>2</sup> A task authorization (TA) is a document used to authorize specific work or tasks to be performed by a contractor under a broader existing contract. It's an administrative tool enabling a client to request services "as and when needed". TAs specify the scope, deliverables, and timelines for each particular task, ensuring contractors understand their responsibilities, and are not a contract themselves.

19. For the 17 procurements which were subject to the terms of the former MLUA, PSPC was the contracting department for 5 contracts and the remaining 12 contracts were awarded by departments on their own behalf. Of these 12 procurements, 4 contracts were awarded by GAC, 1 contract was awarded by IRCC, 3 contracts were awarded by DND and 4 contracts were awarded by SSC.

20. For the 7 procurements which were subject to the terms of the revised MLUA, GAC was the contracting department for 5 solicitations and DND and SSC were the contracting departments for 1 solicitation each. All were solicited by these departments on their own behalf.

21. Of the 24 procurements reviewed, 16 were procured using the TBIPS method of supply and 8 were procured using TSPS (task-based) method of supply.

22. The table below summarizes these 24 procurements:

Method of Supply	Review of Procurement and Contracting Files (17 contracts)				Review of Solicitation Documents Only (7 solicitations)				Total Number
	Awarded by Department		Awarded by PSPC		Awarded by Department		Awarded by PSPC		
	TBIPS	TSPS (task-based)	TBIPS	TSPS (task-based)	TBIPS	TSPS (task-based)	TBIPS	TSPS (task-based)	
ESDC	-	-	3	-	-	-	-	-	3
GAC	3	1	-	-	5	-	-	-	9
IRCC	-	1	-	1	-	-	-	-	2
DND	1	2	1	-	-	1	-	-	5
SSC	3	1	-	-	-	1	-	-	5
<b>TOTAL</b>									<b>24</b>

## V. Policy Overview

23. The DMP divides relevant responsibilities between Business Owners (client department, technical authorities) and Contracting Authorities. In the early stages of the procurement process, Business Owners are responsible for clearly defining the intended outcomes of the procurement and working with Contracting Authorities to support procurement planning and decision making. For their part, Contracting Authorities are responsible for providing advice and recommending options to Business Owners on procurement strategies that meet operational requirements and have the intended results. In the context of this review, the 5 selected departments requiring professional services were the Business Owners on all 24 contracts, and procurement personnel from these departments (19 contracts) or PSPC (5 contracts) were the Contracting Authorities.

24. This review also examined practices related to resourcing and if these practices were conducted in accordance with the revised terms of the MLUA between client departments and PSPC.

## VI. Results

25. Practices pertaining to procurement and contracting activities employed by federal departments were assessed within the 4 LOEs noted in paragraph 15, above (as applicable). The Procurement Ombud has made 4 recommendations to address the issues identified in the review regarding fairness and transparency. The recommendations, which are summarized in Annex I of this report, are based on the analysis of information and documentation provided to OPO by ESDC, IRCC, GAC, DND, SSC and PSPC during the course of the review.

26. In instances throughout the report, multiple observations may have been made regarding a single file. As a result, the number of observations may not always correspond to the number of files cited.

### **LOE 1: Evaluation criteria and selection plans were established in accordance with applicable laws, regulations and policies**

27. The DMP states that Business Owners, in collaboration with Contracting Authorities, are responsible for developing clear Statements of Work (SOWs) and technical evaluation criteria in order to support procurement planning and decision making. Contracting Authorities are also responsible for designing and conducting the bid evaluation process, financial assessment and limiting the number of mandatory technical criteria to those determined to be essential requirements in order to achieve the desired outcomes. While mandatory criteria must always be met in order for a bid to be deemed compliant, certain selection methods also factor in scores achieved by bidders in relation to point-rated criteria. Fair evaluation criteria and clear communication of the selection method play an important role in allowing bidders to prepare responsive bids.

28. When developing a requirement, the government may seek the assistance of suppliers with particular experience or expertise. This may be done through a Request for Information (RFI) process where feedback from potential suppliers helps the government to better understand market offerings and capacity before a formal procurement process is initiated. The government may also engage the services of suppliers who provide professional services in the field of procurement to help develop a requirement. For instance, if internal capacity is an issue, the government may seek the services of a procurement specialist under the TSPS (task-based) method of supply to help prepare the SOW and evaluation criteria. In all cases, the engagement of suppliers in the development of requirements must be done in a fair and transparent manner in order to ensure the integrity of the future procurement process.

29. OPO's review of the procurement planning process, including the evaluation criteria, selection methods and involvement of suppliers in the development of the requirement, applied to all 17 files reviewed under LOE 1.

## **Involvement of suppliers in the development of requirements**

**With the exception of 1 file, there was no evidence of involvement from suppliers in the development of requirements. In the 1 file where supplier involvement was noted, it was done in a fair and transparent manner.**

30. The DMP states that when engaging with industry, Contracting Authorities and Business Owners are responsible for ensuring the principles of a fair, open and transparent procurement process are respected.

31. In 16 of the 17 applicable files, there was no evidence of involvement from suppliers in the development of the SOW or evaluation criteria. In 1 file for a contract awarded by PSPC on behalf of ESDC for the provision of professional services to provide strategic planning, recommendations and operational support to help ESDC reduce technical debt and put management processes in place to manage future debt, a Contractor was engaged to provide 3 resources to assist in preparing the requirement and associated procurement documentation. Conflict of interest forms signed by the resources were on file which stipulated that the Contractor and any resources performing work in support of the preparation of the requirement would not be eligible to bid on the requirement. They would also be prohibited from bidding on any follow-on contracts. Further, the Request for Proposal (RFP) included a section which advised bidders of the names of the Contractor and its resources involved in the development of the requirement and advised if these parties were involved in the preparation of their bid it would be rejected and that Canada would not accept a bid from the resources or Contractor.

32. These measures taken by PSPC and ESDC helped to ensure the involvement of resources in the development of the requirement was transparent and the integrity and fairness of the competitive process was maintained.

## **Resource evaluation criteria**

33. In all 17 files reviewed, evaluation criteria (mandatory and point-rated) were included for the purpose of determining the experience and qualifications of proposed resources. These are referred to as “resource criteria”. When included in a solicitation, proposed resources must meet the mandatory resource criteria, and as was the case for the files reviewed, their scores against point-rated resource criteria will be a factor in the selection of the winning bidder. This review was limited to resource evaluation criteria only as this type of criteria is relevant to the issue of bait and switch. Evaluation criteria related to the bidder (i.e., corporate criteria) were not reviewed.

34. Resource criteria play an important role in ensuring that resources performing work under the contract have the required knowledge, skill, and experience to provide quality results. This applies not only to resources originally proposed and evaluated in the bidding process, but also to replacement resources when resources are to be replaced or to additional resources when resources are added to perform work during contract administration as these resources are also evaluated against these criteria.

35. When procuring certain resource categories using the TSPS (task-based) method of supply, proposed resources must be evaluated against the requirements of the “Flexible Grid”.

The Flexible Grid provides a total score for education, professional certifications and relevant experience which is used to determine whether or not the resource meets the minimum score required for their proposed category and level. A similar requirement exists for the TBIPS method of supply where resources must be assessed as meeting the minimum Experience Levels (i.e., necessary years of experience) indicated for their proposed category and level.

#### Mandatory Resource Criteria

**In all files, mandatory resource criteria were described with sufficient clarity, consistent with the work described in the SOW, and did not unfairly restrict competition. However, in 3 files, the mandatory resource criteria did not assess resources against the minimum qualifications of the selected method of supply.**

36. In all 17 files, mandatory resource criteria were clear, consistent with the requirement and not overly restrictive. However, in 3 files the criteria did not assess resources against the minimum qualifications required for the method of supply used and the evaluation reports did not make reference to whether the proposed resources met these minimum qualifications.

a) In 2 files for contracts procured under the TBIPS method of supply, the mandatory resource criteria did not require the assessment of the proposed resources against the Experience Levels required:

i. In 1 file for SSC for Operations Support Specialists (Level 2 and Level 3), the required Experience Levels were as follows:

Level 2: 5- < 10 years of experience

Level 3: 10+ years of experience

However, the mandatory resource criteria did not require proposed resources be evaluated as having any amount of experience. There was only 1 mandatory resource criterion for each of these resource levels, and both related to security clearance.

ii. In 1 file for DND for Business Consultants (Level 3), the required Experience Level was as follows:

Level 3: 10+ years of experience, or 5+ years of experience with a recognized professional certification

However, the mandatory resource criterion required only 60 months (i.e., 5 years) of experience as a Business Consultant and there was no requirement for the proposed resource to have a professional certification (only a post-secondary degree in certain acceptable fields of study).

b) In 1 file for SSC for a contract procured under the TSPS (task-based) method of supply, the mandatory resource criteria did not require the assessment of the proposed resources against the minimum points required per the Flexible Grid:

- i. The requirement was for a senior Business Architect and the Flexible Grid required a minimum of 100 points be achieved through a combination of education, professional certification and experience:

Senior: Minimum 100 pts

Education

University (PhD, Graduate, Undergraduate, degree): 35 pts

College or CEGEP diploma/certificate: 25 pts

Professional certification

Relevant professional certification: 15 pts

Relevant experience in consultant category

...

≥10 yrs: 120 + months—65 pts

However, the mandatory resource criterion required bidders to demonstrate the proposed resource had (emphasis added):

*“A college diploma (computer science, information technology, statistics, data science, data management, information systems or other IT related field); OR A university degree at the Bachelor level (computer science, information technology, statistics, data science, data management, information systems or other IT related field); **OR** A minimum of 10 years (in the last fifteen years) work experience in an IT related field.”*

Based on this, a proposed resource could have no education credentials but have a minimum of 10 years of experience and be compliant. However, a minimum of 10 years of experience would only earn a proposed resource 65 points per the Flexible Grid (not the required 100).

37. When mandatory resource criteria do not address the minimum requirements for the category and level of the method of supply used, departments run the risk of engaging resources that are not qualified to perform the tasks at the required level and may end up having to pay more for these services than they should. This also allows suppliers the opportunity to bid resources with higher credentials in order to win the contract with no subsequent requirement for resources added or replaced post-award to have the necessary minimum level of knowledge and experience required. The method of supply's minimum requirements must be part of the mandatory resource criteria both to ensure the fairness of the contract award process, and to ensure that replacement or additional resources meet these same requirements.

## Point-Rated Resource Criteria

**In all 17 files, point-rated resource criteria were described clearly, not overly restrictive and were consistent with the work described in the SOW. In 3 of the files, the point-rated resource criteria awarded points to resources based on past work experience with the procuring department, however, the inclusion of these criteria did not limit participation.**

38. In all files reviewed, point-rated resource criteria were clear, consistent with the work described in the SOW, not overly restrictive and scoring guides were clear about how scores would be assigned.

39. In 3 files for DND the point-rated resource criteria awarded points for having DND or Canadian Armed Forces (CAF) experience. In these files, the original resources were either not replaced or replaced with resources that met the original resource's experience and qualifications.

- a) In 1 file for Intermediate Engineering Graduates, the rated criterion RT4 stated:

The bidder's proposed resource has demonstrated experience obtained in the last 84 months in DND contracting and procurement activities as a technical authority. Out of a maximum of 220 points, this criterion accounted for a possible 25 points. A minimum pass mark was not required.

- b) In 1 file for Business Consultants (Level 3), the rated resource criteria awarded points based on a resource's past DND work experience. Rated criterion RT1.3 stated:

The proposed resource should have twenty-four (24) months within the last one hundred and twenty (120) months demonstrated experience working at managing and improving the in-service support of complex DND weapon systems (RCAF aircraft, Radar and Communications Systems, and/or RCN ships). Out of a maximum of 60 points, this criterion accounted for a possible 15 points. A minimum pass mark of 40 points was required. In the event 2 or more responsive bids have the same lowest evaluated price, the proposal with the most months' experience in RT1.3 was to be recommended for contract award.

- c) In 1 file for junior Life Cycle Management Specialists, rated criterion RT1.3 stated:

The Bidder's proposed resource should have more than 12 months of experience working within the Department of National Defence. Out of a maximum of 60 points, this criterion accounted for a possible 10 points. A minimum pass mark of 30 points was required.

40. The Canadian Free Trade Agreement (CFTA), which applied to these procurements, prohibits limiting participation in a procurement only to suppliers that have previously been awarded one or more contracts by the procuring entity. Criteria which provides such an

advantage risks appearing as designed to favour certain suppliers and their resources. However, in these files, the inclusion of these criteria did not limit participation as the delta between bidder's evaluated scores was significant enough that any points awarded to this criterion did not impact the contract award decision. Further, the points for these criteria were weighted in a way that bidders could still win the contract even if they didn't score points to these criteria.

41. However, departments are cautioned from awarding points based on a resource's past experience at a specific department. Doing so can limit competition if point weighting is not balanced and may restrict suppliers and their highly qualified resources who have not had a direct relationship with the department, yet are fully qualified to meet the requirement, from winning the contract. When resource criteria are overly restrictive, it can make it more challenging for the Contractor to provide replacement or additional resources that can also meet the requirements for acceptance during contract administration. For instance, if criteria are overly restrictive, this may impact the Contractor's ability to source qualified resources that have the same qualifications as the originally bid resource. To ensure successful contract administration, resource evaluation criteria must be realistically attainable, striking a balance between quality assurance with practical supplier capabilities.

## **Selection Methodology**

**In all files, the selection methodology clearly communicated the manner in which the contract would be awarded.**

42. For 16 of the 17 files examined, the selection method applied was "highest combined rating of technical merit and price". This methodology evaluates bids by incorporating point-rated criteria and price into the evaluation and applying a weighting to both. For example, a department may select a more technically-focused ratio of 80% weighting for the technical point-rated criteria and 20% for the bid price if specialized technical knowledge is required. The selection method for the 1 remaining file was "lowest evaluated price per point". The bid that has the lowest ratio of price to points is recommended for contract award.

43. These selection methods were clearly communicated to all potential suppliers in the solicitation documents so bidders knew exactly how the winning bids were to be selected. This helps to ensure that all bidders are treated fairly and helps them tailor their bids to reflect the elements the government values most in the supplier selection process.

***Recommendation 1: DND and SSC should review its policies and training, and update as required to ensure mandatory resource criteria address the minimum qualifications required by the selected method of supply.***

**LOE 2: Evaluations of original resources proposed in the bid were conducted in accordance with the solicitation**

44. In solicitations where the qualifications of resources are evaluated and these results are considered in the selection of the best-value supplier, it is important the evaluations are conducted exactly as described in the solicitation. Doing so ensures transparency by eliminating the use of undisclosed criteria, fairness in that the bids are treated equally, and supports best value as considered by the government in relation to the requirement.

45. The evaluation of the original resources proposed in the bid also plays a key role during the administration of the contract. Replacements for original resources typically must be evaluated as having equivalent or higher qualifications and experience than the originally proposed resources. Where the solicitation requires this, meeting the mandatory requirements and the score obtained by the original resource to the point-rated resource criteria becomes the “baseline” for any future replacement resources. This helps to ensure the government is receiving services of comparable quality to what it paid for, and to what was originally proposed by the Contractor.

**With minimal exceptions, the evaluation of original resources was conducted in accordance with the solicitation.**

46. In all 17 files reviewed, proposed resources were evaluated against all mandatory and point-rated resource criteria included in the bid solicitation and there was no evidence to suggest undisclosed criteria were applied by evaluators. In cases where bids were deemed non-compliant to mandatory resource criteria, there was rationale provided by evaluators to support these decisions. In files with more than one responsive bid, there was also evidence to support that the selection methods were applied appropriately for the purposes of selecting the winning bidder.

Scores awarded to point-rated resource criteria

47. In only 1 file for DND, points were not awarded to original resources in accordance with the scoring grid for several point-rated resource criteria. For example, rated criterion RT2 stated the scoring grid for the experience to be demonstrated as follows:

- 0-6 months = 0 points
- 7-12 months = 5 points
- 13-24 months = 15 points
- 25-36 months = 20 points
- 37-48 months = 25 points
- More than 48 months = 30 points

However, the winning bidder was awarded 23 points to this criterion which was not a possible score. The losing bidder was awarded 12 points, also not a possible score.

48. OPO noted similar instances of point allocation in this file that were inconsistent with the scoring grid in the solicitation for both of the compliant bids. In response to this observation,

DND confirmed that in instances where the 3 evaluators could not reach a consensus, the scores were averaged by adding them together and dividing by the number of evaluators. This approach was not outlined in the solicitation as a possible evaluation procedure.

49. Section 4.5.7 of the DMP states that Contracting Authorities are responsible for “Designing and conducting the bid evaluation process, financial assessment and due diligence.” Partial points may not be awarded unless specifically contemplated in the solicitation document. By not observing the evaluation procedure in the solicitation, DND has exposed itself to the risk that ambiguities in the selection process could result in the contract being wrongly awarded thus compromising the integrity of the procurement process. It also means DND may not be able to defend and explain its decisions and actions and prove that they were made in accordance with the applicable laws, regulations, and policies. In this case, there was a difference of 70 points between the 2 compliant bidders so it is very unlikely that this error impacted the supplier selection results.

#### Validation of resource security clearance

50. All files included security requirements for proposed resources. In 14 of 17 files, there was evidence to support that the security clearances of the proposed resources were validated at the appropriate time as detailed in the bid solicitation. However, in 3 files, issues with security clearances were noted.

51. In 1 file for IRCC, the security clearances of the 2 proposed resources were to be validated before the award of the contract, however this was only done prior to the issuance of a task authorization requiring the resources to perform work. In response to this observation, IRCC confirmed that despite them not confirming security clearances upon contract award, the requisite clearances were in place on award.

52. In 1 file for SSC, there was no evidence on file that the security clearances of the proposed resources were validated at the date of bid closing as required. None of the proposed resources performed work on the contract so security was also not validated for these resources during contract administration. Of the 36 resources who performed work, evidence of security verifications were on file for 35 resources. In another file for SSC, there was no evidence on file to support a replacement resource’s Secret clearance was extended beyond the date of its expiry which occurred during their performance of work on a task.

#### **LOE 3: Evaluations of replacement/task authorization (TA) resources were conducted in accordance with the contract**

53. This LOE applied to all 17 files. OPO reviewed the replacement and added task authorization (TA) resources who worked in the same resource categories and levels as the originally proposed resources (i.e., “core” resource categories).

54. A replacement resource refers to a substitute for an originally proposed resource that is no longer available or suitable to perform work under the contract. For example, the original resource (Resource A) was proposed in the Contractor’s bid as the Senior Project Manager.

However, Resource A resigns from their employment with the Contractor and the Contractor proposes a replacement (Resource B) to take their place.

55. Another example of a replacement resource scenario is if the first TA issued required the services of the Senior Project Manager, but instead of proposing Resource A to perform the work, the Contractor proposed another resource (Resource B). As such, Resource B is a replacement resource to Resource A. More plainly put – if a department awards points for a specific individual's qualifications, then those individuals should actually perform the work. If not, the resource taking their place on the contract would be considered their replacement.

56. In order to prevent bait and switch tactics by the Contractor, the process of replacing resources during the administration of the contract must be properly managed. Failure to do so can leave the government exposed to unsatisfactory outcomes in the services they receive and price they pay, and threaten the fairness and integrity of the procurement process as a whole.

57. The evaluation of replacement resources is to be done in accordance with the requirements of the bid solicitation. When the terms of the contract require replacement resources to meet or exceed the qualifications of the originally proposed resource, and point-rated resource criteria are included in the solicitation, the point score obtained by the original resource must be met or exceeded by their replacement (in addition to meeting the mandatory resource criteria). It is not sufficient for the replacement resource to simply meet the minimum point level required in the original solicitation.

58. As opposed to a *replacement* TA resource, an *added* TA resource refers to a resource engaged to perform work on a TA that has been issued after the main contract has been awarded. For example, the original resource, Resource A, is working on a TA in their role as a Senior Project Manager. Subsequently, a need arises for these same services and Resource C is proposed by the Contractor. Resource C is an added TA resource. The qualifications of added TA resources are assessed at the time of tasking (not during bid evaluation) and need not meet or exceed the point scores obtained by the original resource; rather, added TA resources must only meet the minimum pass score of the point-rated or mandatory resource criteria as their inclusion on the contract does not impact which supplier would have won the bid.

### Controls

59. There are various controls in place to support the government in preventing bait and switch tactics and to help ensure the Contractor delivers a resource with the knowledge, skills and experience of the originally proposed resource.

60. The Status and Availability of Resources clause:

- This certification signed by the Bidder and submitted with their bid states the proposed resources are actually available and willing to perform the work.
- Bidders certify they have the resource's permission to propose their services. Upon request from the Contracting Authority, Bidders are required to provide a written confirmation signed by the proposed resource certifying this. This helps to empower

Contracting Authorities to confirm whether the supplier intended on providing the services of a resource if they suspect they may not have had their permission to propose them.

- Further, if a replacement resource is required for reasons beyond the Bidder's control, they must advise the Contracting Authority of the reason for the substitution. Limited reasons are considered to be beyond the control of the Bidder (e.g., resignation, termination, maternity or parental leave).

61. Professional Services Resources clause:

- This clause contains provisions similar to those Status and Availability of Resources clause, though certain versions of the clause do not require a reason for the resource's unavailability to be provided to the Contracting Authority.

62. The Replacement of Specific Individuals clause:

- This clause was incorporated in the General Conditions of the Standard Acquisition Clauses and Conditions (SACC) manual. In its unmodified state, the clause requires bidders propose replacement resources with "similar" qualifications and experience to individuals identified in the contract.
- However, this clause can be modified by the Contracting Authority to require replacement resources have qualifications or experience that "meet or exceed" those obtained for the original resource. When this clause is modified to the "meet or exceed" level in solicitations where the evaluation of resources is a factor in the selection of the winning bid, it supports fairness by ensuring the results of the bid selection process are unaffected by acceptance of replacement resources.

## **Replacement resources**

**In 8 of the 17 files, all original resources performed work on the contract.**

63. When the resource category and level of the originally proposed resource was required on a task authorization, in 8 of 17 files reviewed all original resources performed some or all of the work on the contract.

64. In 5 of the 8 files the resources never required a replacement. In 1 file for GAC, the Contracting Authority made efforts to ensure the original resources would be available to perform the work by confirming this with the Contractor upon contract award. This is a good practice and should be modelled by other departments.

65. In 3 of the 8 files, the originally proposed resources were later replaced. In 2 of the 3 files, the replacement resources did "meet or exceed" the experience and qualifications of the original resource as required. However, in 1 of these files, the replacement resource did not, and the clause in the contract did not require a reason for the original resource's unavailability be provided thus no reason was on file.

**In 6 of the 17 files, the original resources did not perform any work on the contract.**

66. In 6 of the 17 files reviewed none of the original resources worked on the contract when their category and level was required. In most cases, OPO noted issues with the management of the replacement resource process. However, in 1 file, the Contracting Authority was diligent in ensuring the department received the quality of resources proposed by the Contractor and in doing so, helped to maintain the fairness and integrity of the procurement process.

- a) In a file for a contract awarded by PSPC on ESDC's behalf, the Contractor proposed 3 resources for the first 3 tasks of the contract, however, none of the proposed resources were the originally proposed resource identified in the bid for the category and level sought. The PSPC Contracting Authority asked why the original resource was not being proposed and noted to the Contractor *"As stated in the RFP, and as I reiterated in our meeting, by submitting a bid, the Bidder certifies that, if it is awarded a contract as a result of the bid solicitation, every individual proposed in its bid will be available to perform the Work as required by Canada's representatives."*

The Contractor confirmed that the original resource was no longer available as they had resigned. The Contractor noted that one of the proposed resources scored the same as the original resource. However, upon evaluation by ESDC, it was determined this was not the case. The Contracting Authority asked for another resource to be provided that met or exceeded the score of the original resource. The Contractor was able to provide a qualified replacement resource. This is another good practice that should be modelled by other departments.

67. Further, in 1 of these 6 files for GAC, the reason for the originally proposed resource not performing work was due to the department's request for a replacement as a result of performance concerns noted prior to the issuance of the task. The replacement resource was evaluated against only the mandatory resource criteria. As such, it cannot be determined if the replacement resource had the experience and qualifications that "met or exceeded" the original resource as required.

68. In the remaining 4 files, there was no evidence that a reason was provided for the originally proposed resource's unavailability. The requirement to provide a reason varied by file.

- a) In 1 file for GAC, the earliest task requiring the originally proposed resource's category was initiated 91 calendar days from bid closing (28 days from contract award). There were 2 replacement resources and one of these resources' scores to the point-rated resource criteria did not "meet or exceed" the score obtained by the original resource as required. A reason for the original resource's unavailability was not required per the clause in the contract.
- b) In 1 file for SSC, the earliest task requiring the originally proposed resource's category was initiated 84 calendar days from bid closing (12 days from contract award). The replacement resource's score to the point-rated resource criteria did not "meet or exceed" the score obtained by the original resource as required. The Contracting Authority later requested the Contractor provide a replacement for

this resource due to poor performance. A reason for the unavailability of the originally proposed resource was required per the clauses of the contract but was not on file.

- c) In 1 file for a contract awarded by PSPC on IRCC's behalf, the earliest task requiring the originally proposed resource's category was initiated 140 calendar days from bid closing (76 days from contract award). There were 9 replacement resources and while 8 of them did "meet or exceed" the score obtained by the original resource, one did not. However, per the unmodified Replacement of Specific Individuals clause in the contract, replacement resources were only required to have "similar" experience and qualifications to the original resource. Reasons for the unavailability of the originally proposed resources were required per the clauses of the contract but none were on file.
- d) In 1 file for SSC, the earliest engagement of the originally proposed resource's category on the initial task was 107 calendar days from bid closing (23 days from contract award). Of the 36 resources who performed work on the contract, evaluation grids for 14 of these resources did not demonstrate they were evaluated against the criteria required by the contract (an evaluation grid from a previous contract was used). As such, OPO was unable to determine the scores for these resources relative to the requirements of the bid solicitation. Of the 22 resources that had evaluation grids on file that reflected the criteria required by the contract, only 2 replacement resources obtained scores that were equivalent to the originally proposed resource for their category and level. All other resources (replacement or additional) obtained scores that met the minimum pass mark. SSC's failure to evaluate resources added after contract award against the required criteria raises concerns about whether these individuals possessed qualifications equivalent to those of the originally proposed resources, as required, and in turn, if the contract was awarded to the best-value supplier. Reasons for the unavailability of the originally proposed resources were required per the clauses of the contract but none were on file.

**In 3 of 17 files, some of the original resources performed work while others did not.**

69. In 3 of the 17 files reviewed some originally proposed resources worked on the contract while others did not and were replaced. In 1 file from GAC the replacement resources did not "meet or exceed" the experience and qualifications of the original resource. In the other file from DND, the replacement resource was not evaluated against the same criteria as the originally proposed resource and as a result, their equivalency cannot be determined.

- a) In 1 file for GAC, all 4 core categories and levels were engaged on TAs. Of the 5 originally proposed resources in these core categories, 4 resources performed work on the contract. The remaining original resource did not perform any work on the contract. There was no evidence on file that a reason was provided for the original resource's unavailability. However, the clause in the contract did not require a reason for the original resource's unavailability be provided thus no reason was on file. The earliest task requiring this original resource's category

was initiated 343 calendar days from bid closing (311 days from contract award). The replacement resource's score to the point-rated resource criteria did not "meet or exceed" the score obtained by the original resource as required. Of the 4 original resources that performed work on the contract, 2 resources were replaced. These replacement resources' scores to the point-rated resource criteria did not "meet or exceed" the scores obtained by the original resources as required.

- b) In 1 file for DND, the 2 core categories and levels were engaged on TAs and one of these core categories specifically required the resource to be bilingual. Of the 4 originally proposed resources in these core categories, 3 resources performed work on the contract. The remaining bilingual original resource did not perform any work on the contract and the Contractor advised the Contracting Authority that the resource had taken another job (even though a reason was not required to be provided per the clause in the contract). The earliest task requiring this original resource's category and language profile was initiated 270 calendar days from bid closing (237 days from contract award). The replacement resource was evaluated against only the mandatory resource criteria whereas the originally proposed resource was also evaluated against point rated criteria. As such, it cannot be determined if the replacement resource had the experience and qualifications that "met or exceeded" the original resource as required.

#### Impacts to the selection of the best-value supplier

70. In the 9 files where the originally proposed resources performed the work or their replacements were evaluated as having "met or exceeded" the original resource's scores to the point-rated resource criteria, there was no impact to the government's selection of the best value supplier. In essence, had those replacement resources been presented at the time of the bid, the supplier selection results would have been the same.

71. In 1 file, the terms of the contract only required replacement resources to have "similar" experience and qualifications to the originally proposed resources. In the 7 remaining files replacement resources were not evaluated as having experience or qualifications that met or exceeded those of the original resources but were required to per the contract. In 1 of these files, limited determinations regarding the evaluation of resources could be made due to the use of criteria that was different from those required in the contract. As such, these 7 contracts may not have been awarded to the best-value supplier.

#### Application of Controls to Prevent Bait and Switch

72. The controls available for preventing bait and switch tactics were not always leveraged by the departments. In cases where the available controls were utilized to hold the Contractor to account, this helped ensure the government received a resource with the knowledge, skill, and experience of the proposed resource and the quality of services that were proposed in the Contractor's bid, and in doing so, ensured there was no impact to the selection of the best-value supplier.

73. In 3 files, the Replacement of Specific Individuals clause was not modified to specify replacement resources were to “meet or exceed” the originally proposed resources; rather, they only required “similar” experience and qualifications despite the scores of the originally proposed resources being a factor in the Contractor winning the bid. In 2 of these files, replacement resources were required. When this clause is not modified to the “meet or exceed” level, the government risks impacting the fairness of the original bid award as had these less qualified resources been proposed in the bid, it may have resulted in a different supplier being selected. In order to maintain the integrity of the selection of the winning bid, the replacement should have experience and qualifications equivalent to or higher than the originally proposed resource.

74. In 7 files, the Professional Services Resources clause did not require a reason for the unavailability of the originally proposed resources to be provided. When a reason is required to be provided, this makes it harder for Contractors to quietly swap resources as they must explain to the Contracting Authority why the originally proposed resources are no longer available.

### **Added task authorization resources**

#### **With minimal exceptions, the evaluation of added task authorization resources was conducted in accordance with the solicitation.**

75. When adding resources to TA’s, the assessment processes related to tasking typically require resources be evaluated as having met the mandatory resource criteria along with the minimum pass score of the point-rated resource criteria or mandatory resource criteria only. These resources are not held to the same evaluation standard as replacement resources since their inclusion on the contract does not have an impact on which supplier would have won the bid.

76. OPO’s review of added TA resources applied to all 17 files. In 13 of 17 files, added TA resources were evaluated as having met the evaluation requirements as outlined. As previously noted, for 1 file from SSC, OPO cannot make the necessary determinations due to evaluation documentation which demonstrated resources were evaluated against criteria that was different from those required in the contract.

77. However, in 3 files, it was unclear if added TA resources were evaluated against the required criteria.

- a) In 1 file for a contract awarded by PSPC on behalf of ESDC, the solicitation document stated that added TA resources were required to meet the minimum pass score of the point-rated resource criteria. However, the tasking assessment procedure in the contract stated "Only quotations that meet all of the mandatory criteria will be considered." In response to this observation, PSPC confirmed that added TA resources were required to meet the mandatory criteria only.
- b) In 1 file for GAC, the Resources Assessment Criteria and Response Table in the contract required only mandatory resource criteria be assessed for resources at the time of tasking. However, the tasking assessment procedure in the contract stated "Only quotations that meet all of the mandatory criteria will be considered

for assessment of the point rated criteria. Each resource proposed must attain the required minimum score for the point rated criteria for the applicable Resource Category. If the minimum score for any proposed resource is less than what is required, the Contractor's quotation will be found to be non-responsive." In response to this observation, GAC noted that this was an administrative error and confirmed that added TA resources were required to meet the mandatory criteria only.

- c) In 1 file for SSC, the tasking assessment procedure in the contract stated "Each proposed resource will be assessed for compliance with the mandatory requirements identified in Appendix C to Annex A applicable to that Category of Personnel. Proposed resources that do not comply with each and every mandatory criteria will not be accepted." However, OPO noted several instances of added TA resources being evaluated against both the mandatory and point-rated resource criteria. In response to this observation, SSC noted that this was an administrative error and confirmed that added TA resources were required to meet the mandatory criteria only.

**Recommendation 2:** *PSPC should ensure that the solicitation templates for all methods of supply (MoS) include resulting contract clauses requiring the following when the assessment of specific individuals' experience or qualifications are a factor in the selection of the best-value supplier:*

- *The replacement resource has qualifications and experience that meet or exceed those obtained for the originally proposed resource.*
- *A reason is on file that provides sufficient detail to demonstrate that the originally proposed resource is unavailable due to circumstances beyond the Bidder's control.*

#### **LOE 4: Practices related to resourcing were conducted in accordance with the arrangement between PSPC and client departments**

78. As previously discussed, in order to use PSPC's various professional services methods of supply, client departments must sign Master Level User Arrangements (MLUAs). The MLUAs serve as the instrument granting client departments the authority to use PSPC's methods of supply, and furthermore set out the responsibilities of all parties (PSPC, client department, and Contracting Authority). The MLUA was revised by PSPC in early 2024 to shift the supplier selection process away from the evaluation of proposed resources to instead assessing a Bidder's corporate capacity to provide resources.

79. The DMP echoes this principle and states Contracting Authorities are responsible for:

4.5.4 - To the extent possible, taking past performance into consideration when assessing a bidder's ability to deliver, and managing the contract accordingly.

## Changes to the procurement of professional services

80. On November 28, 2023, PSPC sent a directive to all client department Senior Designated Officials for procurement. The directive advised that all existing MLUAs would be replaced, and that the new agreements would “include important clarifications about the roles Technical Authorities are already required to assume when using these procurement instruments”.

81. As an interim control measure until the new MLUAs were issued, the November 28 directive immediately revoked all delegated authority for client departments to issue TAs against contracts awarded by PSPC under the TBIPS, SBIPS, and TSPS supply arrangements. During this time, all new TAs would require approval by the PSPC Contracting Authority, as would any TA amendments that increased the value of the TA. Additionally, the directive required client departments to **implement to the greatest extent possible** a set of practices when using the methods of supply until such time as their new MLUAs were signed (the former MLUAs were rescinded on March 1, 2024) [emphasis added]. These practices were subsequently incorporated into the revised MLUAs.

82. The revised MLUAs set out specific requirements for Contracting Authorities prior to contract award, as well as before issuing TAs against awarded contracts. Several of these requirements address issues relating to proposed resources, including:

- a) For large TA-based contracts where multiple resources are required, bid evaluations should not assess individual resource qualifications, but rather should focus on the supplier’s corporate capacity and past performance (5.3(d)(v)).
- b) For contract formats other than those referenced in 5.3(d)(v), any resources proposed in a bid must include a digitally-signed proof of consent to be proposed from each resource (5.3(d)(vi)). The same consent is required from resources prior to issuing a TA against an awarded contract (5.3(e)(iii)).
- c) All task-based professional services contracts must include resource evaluation grids which outline the criteria used to evaluate each resource category (5.3(d)(x)). Prior to issuing a TA, all resource resumes must be evaluated against these evaluation grids (5.3(e)(i)).

83. During its review of the revised MLUAs, OPO sought clarification from PSPC regarding its expectation on how client departments were to interpret section 5.3(d)(v), which states that “for large Task Authorization based Contracts where multiple resources are required, bid evaluations are focused on a supplier’s capacity to deliver, and/or demonstrated past performance, and not on the assessment of individual resource qualifications (which should be evaluated only at the issuance of a Task Authorization)”. OPO specifically sought clarification on whether the term “large” referred only to Tier 2 requirements, meaning procurements above an estimated value of \$3.75 million.

84. In response, PSPC advised OPO that “there is no standard definition of metrics for the word ‘large’”, and that several factors are taken into consideration when defining “large” in this

context, including the number of resource categories as well as the contract value. PSPC indicated that the intention was to provide flexibility to client departments, and therefore the specific factors to take into consideration would vary from procurement to procurement. PSPC also confirmed that it was possible that “large” TA-based contracts could be awarded by client departments under their own delegation (i.e., that the estimated contract value would be below \$3.75 million), and that in those cases, the client department Contracting Authority would be responsible for the determination of whether to evaluate resources as part of the bid evaluation.

85. The terms of the MLUA do not impose any such restrictions on contracts that do not include TAs (i.e., non-TA-based contracts) or TA-based contracts for only 1 resource. For these types of contracts, Contracting Authorities may continue to evaluate proposed resources.

#### Departmental policies related to the evaluation of resources going forward

86. OPO contacted each of the departments under review for their interpretation of the requirement of section 5.3(d)(v) of the MLUA, namely, that individual resource qualifications should not be evaluated until the TA stage for large TA-based contracts where multiple resources are required.

- a) DND advised that its Contracting Authorities are expected to ensure that all conditions established in section 5.3 of the MLUA are met, and that they are discontinuing the practice of evaluating proposed resources during bid evaluation in favour of evaluating the bidder’s corporate capacity or demonstrated past performance. The department also indicated that while they had not established specific factors for the purposes of identifying “large” TA-based contracts, “the general expectation is that bidder capacity rather than resource experience will be evaluated” for contracts involving TAs and multiple resources. With regard to professional services contracts that do not include TAs, DND confirmed that Contracting Authorities may evaluate proposed resources as part of the bid. Based on the information provided, the evaluation of proposed resources during bid evaluation is no longer occurring for TA-based contracts with multiple resources at DND.
- b) ESDC responded that evaluation of proposed resources for TA-based contracts with multiple resources no longer occurs during the bid evaluation stage, and that the department has instead shifted to focus on mandatory and rated corporate criteria during the bid evaluation stage. ESDC has also developed comprehensive metrics for identifying “large” TA-based contracts, including contract value, complexity, whether the requirement contains multiple projects within the file, and risk level. For professional services contracts that do not include TAs, ESDC continues to evaluate proposed resources with the bid. Based on the information provided to OPO, it is clear that ESDC no longer evaluates proposed resources during the bid evaluation stage for large TA-based contracts for multiple resources, and that the department has developed a robust set of controls related to professional services bid evaluations.
- c) GAC responded that they do not permit the evaluation of proposed resources as part of bid evaluations and only do so at the TA stage. The department also

indicated that they had not established factors for the purposes of identifying “large” TA-based contracts and instead apply the requirement of MLUA section 5.3(d)(v) to all TA contracts. With regard to professional services contracts that do not include TAs, GAC confirmed that Contracting Authorities could evaluate proposed resources as part of the bid evaluation. From this, it is clear that at GAC, the evaluation of proposed resources during the bid evaluation is no longer occurring for any TA-based contracts, and occurs only for non-TA based contracts.

- d) IRCC responded that evaluation of proposed resources for TA-based contracts with multiple resources occurs both during the bid evaluation, as well as at the TA stage. In circumstances where evaluation of proposed resources occurs during the bid evaluation, IRCC Contracting Authorities must include the “Replacement of Specific Individuals” or “Specific Persons” contract clauses. IRCC has also given consideration to establishing factors for the purposes of identifying a “large” TA-based contract. With regard to professional services contracts that do not include TAs, IRCC confirmed that resources can be evaluated as part of the bid evaluation. Based on information provided to OPO, while IRCC has given consideration to the factors involved in defining large TA-based contracts, it is not clear what combination of these factors IRCC applies to define a “large” TA-based contract with multiple resources. Further, IRCC continues to evaluate proposed resources during bid evaluation for TA-based contracts with multiple resources, but without a clear definition IRCC risks contravening the terms of their MLUA.
- e) SSC responded that the evaluation of proposed resources for TA-based contracts with multiple resources “is usually conducted at the task authorization stage”, and that for new contracts, bid evaluations “will focus on suppliers’ capacity to deliver and not of the individual resource qualifications.” With regard to professional services contracts that do not include TAs, SSC confirmed that resources can be evaluated as part of the bid evaluation. SSC further noted that their intention in the future is to “move the focus to the supplier experience and capacity to deliver the service”. Based on the information provided to OPO, it is unclear what factors (and combination of these factors) SSC uses for defining “large” TA-based contracts with multiple resources. As SSC appears to be in a state of transition from the practice of evaluating proposed resources for TA-based contracts for multiple resources at bid evaluation (“usually” conducting evaluations at the task authorization stage), without a clear definition SSC risks contravening the terms of their MLUA.

87. Based on the information provided to OPO, DND, ESDC, and GAC, no longer evaluate proposed resources during bid evaluation for large TA-based contracts requiring multiple resources in accordance with their respective MLUAs. IRCC, SSC and other departments with MLUAs should consider adopting a similar approach in order to ensure consistency with the terms of their MLUA across their respective procurement requirements.

**Recommendation 3:** PSPC should define what a “large” task-authorization (TA)-based contract is and develop guidance to assist Contracting Authorities in making this determination to ensure application of a common and consistent standard in determining when to apply the condition identified in paragraph 5.3(d)(v) of the MLUA. PSPC should include the definition as an instruction in the solicitation templates.

**Recommendation 4:** IRCC and SSC should discontinue the practice of evaluating individual resource qualifications at the bid evaluation stage for large TA-based contracts where multiple resources are required, in compliance with the terms of their MLUAs.

#### PSPC support to client departments in changes to professional services contracting

88. As a good practice when revising policies and procedures, central organizations should proactively develop tools and templates to support implementation. Promulgating a new policy along with the tools needed to implement it helps to increase consistency and compliance. It also provides client organizations with the opportunity to proactively update their internal procedures accordingly.

89. In order to support client departments’ transition to the revised MLUAs, PSPC developed several tools. These included updated bid solicitation templates to use for Supply Arrangements, a procurement file checklist, a Task Authorization file checklist, a contract administration tracking tool, and examples of Statements of Work and Evaluation Criteria. Additionally, PSPC centralized all RFP templates for these methods of supply for client departments’ ease of access. At the time of this report, the examples of Statements of Work and Evaluation Criteria have not yet been made available to client departments. Ensuring that these example documents are available in a timely manner will help client Contracting Authorities to fully meet their obligations under the revised MLUAs.

#### **Results of evaluation procedures used by departments following the revised MLUA**

**In 5 of the 7 files which were subject to the terms of the revised MLUA, the evaluation procedures of solicitations reflected the department’s internal policies. In the other 2 files, the evaluation procedures permitted the evaluation of resources at the bid evaluation stage.**

90. In order to evaluate the implementation of the revised MLUAs, OPO conducted a review of 7 files from DND, GAC, and SSC. For the purposes of the review, OPO looked at solicitations issued after March 1, 2024, for TA-based contracts for multiple resources under the TBIPS and TSPS (task-based) SAs, procured by departments on their own behalf under their delegated authorities.

91. OPO reviewed 1 file from DND which was solicited under the TSPS (task-based) method of supply and required bidders to propose 8 resources for the 5.2 Technicians (Senior) category. The proposed resources’ qualifications and experience were assessed during the bid evaluation against mandatory technical criteria. The evaluation procedure for this solicitation

was therefore not aligned with DND's policy which required the evaluation of corporate criteria rather than individual resources' qualifications. In their response to OPO, DND indicated that the solicitation plan for this requirement was developed prior to the implementation of the revised MLUAs, and that a change to strategy would have resulted in a disruption to the services. DND further noted that they had considered using corporate criteria for the requirement, but felt it would be overly restrictive due to the likelihood that only the incumbent would have the specific combination of experience for the variety of resources being requested. OPO noted that the solicitation date for this requirement was April 22, 2024, while DND's revised MLUA was signed only the month prior on March 1, 2024.

92. OPO reviewed 5 files from GAC which were subject to the terms of the revised MLUA. All 5 files were solicited under the TBIPS method of supply, and the solicitation documents stipulated that resources were only to be evaluated at the TA stage.

93. OPO reviewed 1 file from SSC which was subject to the terms of the revised MLUA. The file was solicited under the TSPS (task-based) method of supply, and the solicitation documents required bidders to propose 2 resources for the 1.7 Leadership Development Consultant (Level 3) category. The resources were assessed against mandatory and point-rated resource criteria. The solicitation also required 3 additional resources, but they were only to be assessed after contract award. The evaluation procedure for this solicitation was therefore not aligned with SSC's policy as it did not assess corporate capacity. OPO noted that the solicitation date for this requirement was March 5, 2024, while SSC's revised MLUA was signed on February 28, 2024. In their response to OPO, SSC acknowledged that the solicitation documents for this requirement were already completed when the MLUA came into force, and that to change the procurement would have resulted in a delay to the requirement. SSC further noted that they have notified all procurement officers to follow the MLUAs for new solicitations.

94. Based on OPO's review of the evaluation procedures in solicitations issued after the implementation of the revised MLUAs, OPO noted the files reviewed for GAC demonstrated their full compliance to the terms of their MLUA. In the files reviewed for DND and SSC, solicitations were issued within a few days or weeks of the implementation of the revised MLUAs. All 3 departments reviewed have made efforts to transition away from the evaluation of proposed resources at the bid evaluation stage.

**The following sections include observations and insights that are intended to support a deeper understanding of the possible impacts of procurement policy changes and offer potential approaches to address identified challenges or risks.**

### **Unintended Consequences**

95. As noted in paragraphs 60-62 above, prior to the changes implemented by PSPC in revising their MLUA with client departments, there were various existing controls in place to help Contracting Authorities prevent the use of bait and switch tactics by suppliers, such as:

- Discretion to validate a resource's permission to be proposed in the supplier's bid by asking for written confirmation signed by the resource to confirm this consent, along with their availability to perform the work if selected.

- Not accepting a replacement resource unless the supplier has provided the written reason for the originally proposed resource's unavailability demonstrating the circumstances were beyond the supplier's control.
- Requiring replacement resources always meet or exceed the experience and qualifications of the originally proposed resources.

96. Further, the Replacement of Specific Individuals clause (when modified) states in instances where Canada becomes aware that a specific individual identified under the Contract to provide services has not been provided or is not performing, the Contracting Authority may elect to terminate the contract for default.

97. Effective contract administration can also be a valuable tool in preventing bait and switch. As noted as an example in paragraph 66(a), when Contracting Authorities hold suppliers to account by ensuring the resources they propose to perform work during the contract are the same as the resources they proposed in their bid, this helps to ensure that Canada receives the quality of work it expects and pays for, while at the same time mitigating the risk of the supplier engaging in bait and switch to the detriment of the government.

98. Where the MLUA changes made by PSPC have been fully adopted by client departments, namely the discontinuation of evaluating the experience and qualifications of proposed resources as part of the bid evaluation process, the potential for the use of bait and switch tactics by suppliers is effectively eliminated. If the government is no longer awarding a score to a supplier's bid for the experience and qualifications of proposed resources, there is no longer an incentive for the supplier to "bait" the government with their best resources to win the contract, and then "switch" to less qualified resources to perform the work. However, it's unclear why promoting the use of or simply strengthening the existing controls was not chosen as an alternative solution to revising the MLUA and shifting the focus of the evaluations from individual resources' qualifications to corporate capacity.

99. This abrupt shift to a focus on corporate capacity in task-based requirements may have unintended consequences. Small and medium-sized businesses and diverse suppliers have expressed concern they do not have the track record of past contracts to demonstrate the corporate capacity that the government is now seeking under these types of criteria. As a result, these supplier groups may not be able to successfully participate in these processes which impacts the fairness and openness of federal procurement.

100. In January 2024, PSPC issued a Request for Information which was intended to share with industry the changes made to professional services supply arrangement processes. During the Q&A, these concerns were raised to PSPC and in response, PSPC has noted:

"The change in the process is not designed to disadvantage any firm but to allow for a shift to more solutions-based contracting compared to recent norms, including putting less emphasis on specific resource requirements and experience and more on the expertise of a firm and how it can achieve a desired outcome, including areas of social responsibility and Indigenous inclusion..."

...tools such as TBIPS, SBIPS and the TSPS SAs have always required firms to have experience and were never intended as entry level Supply Arrangements. For new firms looking to gain experience and participate in higher value and higher risk procurements in the future, there are other tools available where contracting experience can be gained, such as ProServices, Temporary Help Services (THS) and Shared Services Canada's Scale Up Initiative.

It is also important to note that while some corporate criteria will focus on experience and past performance, others may evaluate the diversity profile of a company as well as other socio-economic factors unrelated to the size of a firm."

101. OPO remains concerned that these changes may have solved 1 problem only to create a barrier to small and medium-sized businesses and Indigenous and diverse suppliers. The ProServices and Temporary Help Services (THS) mandatory methods of supply can be used for suppliers to gain contracting experience, however, the possible contract values under these methods of supply are as follows:

- ProServices – contract financial limits of:
  - \$40,000 (non-competitive)
  - Up to the \$100,000 (i.e., Canada-Korea Free Trade Agreement (CKFTA) threshold) (competitive)
- THS\* – contract financial limits of:
  - \$40,000 (multiple resources per contract) (non-competitive)
  - \$400,000 (1 resource per contract) (competitive)
  - \$1 million (multiple resources per contract) (competitive)
  - More than \$1 million if approved by PSPC (multiple resources per contract) (competitive)

*\*Contract periods must not exceed 48 consecutive weeks (or 72 weeks with PSPC approval)*

102. Corporate criteria in TBIPS or TSPS (task-based) requirements may be used to demonstrate a supplier's past experience delivering services on contracts similar in value, scope and duration to the requirement being sought. As such, contracts awarded to small and medium-sized businesses under the ProServices and THS methods of supply, while providing them with contracting experience, may not provide them with the requisite higher dollar value contract experience needed to satisfy these corporate criteria.

## **Potential Solutions**

### Improved Status Quo

103. In cases where specific knowledge, skills or experience is required to perform a task, departments could be permitted to assess the education, experience and qualifications of resources as part of the bid evaluation process in "large" TA-based contracts for multiple resources provided that:

1. The department assess individual proposed resource qualifications prior to award;

2. Any resources proposed in a bid must include a digitally signed proof of consent to be proposed along with confirmation of their availability to perform the work if a bid proposing them as a resource is selected (this is already required per the terms of the revised MLUA);
3. If a proposed resource is not available to perform a task when requested, the Contractor shall notify the department that the resource proposed in the bid to perform a task is not available, the reason the proposed resource is not available demonstrating the circumstances were beyond the Contractor's control, and propose a replacement resource who meets all mandatory criteria and meets or exceeds the score respecting the required knowledge, skill, and experience of the resource proposed in the bid;
4. If the replacement resource does not meet the mandatory criteria and meet or exceed the score respecting the required knowledge, skill, and experience of the resource proposed in the bid, the department may reject the proposed replacement resource and ask for a different replacement resource;
5. If the Contractor is not ready, willing and able to propose a replacement resource who meets the mandatory criteria and meets or exceeds the score respecting the required knowledge, skill, and experience of the resource proposed in the bid, the department may, in its sole discretion, terminate the contract without notice or indemnity to the Contractor or accept the proposed replacement resource provided they at a minimum meet the mandatory criteria, in which event:
  - a) If the score achieved by the originally proposed resource achieves a rating of senior level but the replacement resource achieves a score of intermediate level, the (hourly/daily) rate payable to the contractor shall be reduced by (insert a percentage equal to the difference between the rate quoted by the supplier for a senior level and intermediate level resource), and
  - b) if the score achieved by the originally proposed resource achieves a rating of senior level but the replacement resource achieves a score of junior level, the (hourly/daily) rate payable to the contractor shall be reduced by (insert a percentage equal to the difference between the rate quoted by the supplier for a senior level and junior level resource), and
  - c) if the score achieved by the originally proposed resource achieves a rating of intermediate level but the replacement resource achieves a score of junior level, the (hourly/daily) rate payable to the contractor shall be reduced by (insert a percentage equal to the difference between the rate quoted by the supplier for an intermediate level and junior level resource).

104. These terms would need to be made clear in the solicitation document in order to ensure all suppliers are aware in order to maintain the fairness and transparency of the procurement process. This strategy would help to discourage bidders from employing bait and switch tactics

as it would diminish the financial incentive for suppliers to misrepresent the availability of their resources for the purposes of winning the contract.

105. While PSPC's direction to discontinue the evaluation of the experience and qualifications of proposed resources as part of the bid evaluation process eliminates the issue of bait and switch, it does so by ignoring it while doing little to achieve for the department the quality of product it bargained and paid for. OPO suggests PSPC consider this potential solution as it would help to ensure the department receives the quality of product it bargained and paid for while also eliminating the advantage supplier's may have to try and use bait and switch tactics.

#### Ensuring inclusive corporate criteria to support participation

106. So as not to disadvantage small and medium-sized businesses, departments must be mindful of ensuring corporate criteria do not unnecessarily restrict competition to large companies, and when past bidder contract experience is required, the contract thresholds cited are proportionate to the requirement with a reasonable limit.

107. For instance, if a procurement is estimated at \$3 million, the Business Owner could consider including a corporate criteria requesting past contracts with a value of at least \$1.95 million (65% of the estimated value of the requirement). When deemed acceptable to do so by the Business Owner, this type of consideration may help provide smaller businesses access to contracts at a higher value so they can gain the experience they need to compete and grow their business.

#### Set-aside for small and medium-sized businesses and underrepresented suppliers

108. In OPO's Knowledge Deepening and Sharing (KDS) study, "[Social procurement: A study on supplier diversity and workforce development benefits](#)", OPO noted that in 1953, the United States established the Small Business Administration (SBA) which is an independent agency to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns". U.S. federal departments and agencies conduct a variety of procurements that are reserved for small business participation (either through small business set-aside or sole-source opportunities). Such procurements can also be for small businesses meeting certain eligibility requirements demonstrating them to be underrepresented suppliers (e.g., women-owned businesses).

109. To address the concerns raised by small and medium-sized businesses in response to PSPC's changes to professional services contracting processes and provide these suppliers with access to high-dollar value contracts, PSPC should consider the establishment of a "set-aside"-style program under the TBIPS, TSPS and SBIPS methods of supply with the following considerations:

- For competitive requirements between \$1 million to \$3.75 million.
- Procurements would not include corporate criteria requiring a demonstration of experience providing services on contracts of similar value.
- Set a percentage target of contracts to be awarded each year under this program.
  - A certain percentage of these contracts could be awarded to various segments of Canada's population that are systemically and statistically

underrepresented or marginalized (e.g., women-owned businesses, black-owned businesses).

110. PSPC has made significant changes to professional services contracting which have greatly reduced the potential for suppliers to engage in bait and switch tactics. In line with these changes, it is now important for the federal government to consider ways to support small and medium-sized businesses throughout this transition, removing barriers, and allowing for fair competition.

## VII. Conclusion

111. The Procurement Ombud reviewed the procurement practices of 6 federal departments to determine whether the practices pertaining to the replacement of resources were conducted fairly and transparently, supported Canada's selection of the best value supplier and were consistent with Canada's obligations under national and international trade agreements, the *Financial Administration Act*, regulations made under it, relevant policies and procedures including the Directive on the Management of Procurement. This included a review of 17 competitive contracts (LOEs 1-3) and 7 solicitations (LOE 4 only).

112. Of the 17 contracts reviewed (LOEs 1-3), PSPC was the contracting department for 5 contracts, and a total of 12 contracts were established by ESDC, GAC, IRCC, DND and SSC under their own contracting authorities. Of the 7 solicitations reviewed (LOE 4 only), GAC, DND and SSC were the contracting departments. All contracts and solicitations were issued under PSPC's TBIPS and TSPS (task-based) methods of supply.

113. Regarding LOE 1, overall OPO concluded that the resource evaluation criteria and selection plans were established in accordance with applicable laws, regulations and policies. There was no evidence of unfair involvement from suppliers in the development of requirements, and in the 1 file where supplier involvement was noted, it was done in a fair and transparent manner. In all files, mandatory resource criteria were clear, none were overly restrictive, and all were consistent with the requirements. However, OPO found that in 3 files, the mandatory resource criteria did not address the minimum qualifications of the chosen method of supply. In all files, the selection methods clearly communicated the manner in which the contract would be awarded.

114. Regarding LOE 2, overall OPO concluded the evaluation of originally proposed resources was conducted in accordance with the solicitation. While in 1 file the point allocation to the point-rated resource criteria was not done in accordance with the scoring grid, all files demonstrated that original resources were evaluated against all the necessary criteria and no undisclosed criteria were applied by the evaluators. Moreover, selection methods were applied appropriately for the purposes of selecting the winning bid. In the majority of files, there was evidence to support that the proposed resources' security clearances were validated and were done so at the appropriate time; however, there were 3 files that lacked such support.

115. Where an originally proposed resource performs work or their replacement meets all mandatory resource criteria and is evaluated as having "met or exceeded" the score of that

original resource to the point-rated resource criteria, there is no impact to Canada's selection of the best-value supplier. However, when a replacement resource is not evaluated as having met or exceeded this score, the selection of the winning supplier is called into question, along with the fairness of the procurement process.

116. Regarding LOE 3, OPO concluded that in 9 files of 17 files (more than half), the practice of replacing resources did not impact the government's selection of the best-value supplier, as either the originally proposed resources performed the work or were replaced with resources who met the mandatory resource criteria and were found to meet or exceed the experience and qualifications of the original resource. However, in 7 of the 17 files, replacement resources were not evaluated as having met or exceeded the required experience or qualifications of the original resource. In 1 of these files, limited determinations regarding the evaluation of resources could be made due to the use of criteria that was different from those required in the contract. In the 1 remaining file of the 17 files reviewed, the contract only required that replacements be held to a standard of "similar". With minimal exceptions, added task authorization resources were evaluated as having met the necessary requirements. While the evaluation of these resources is important for ensuring the government receives the quality of work it expects and pays for, the evaluation of these resources does not have an impact on the government's selection of the best-value supplier.

117. Regarding LOE 4, OPO reviewed how the selected departments have interpreted the requirements of their revised MLUAs with PSPC, namely the requirement to no longer evaluate the experience and qualifications of specific individuals for large task authorization-based contracts where multiple resources are required. OPO concluded that 3 of the 5 client departments reviewed had implemented internal policies to no longer assess resources in this manner for these types of contracts. However, OPO concluded that 2 of the 5 client departments reviewed had not yet fully adopted this change or developed the requisite guidance to help ensure they remained in compliance with the terms of their MLUAs with PSPC.

118. Also, as part of the review under LOE 4, OPO reviewed 7 solicitations from departments that were issued under the terms outlined in the revised MLUAs. In 5 of the 7 solicitations reviewed, OPO concluded the evaluation procedures reflected the department's internal policy and terms of their MLUA with PSPC to only assess the experience and qualifications of resources at the task authorization stage and not as part of the bid evaluation. However, in 2 of the 7 files, OPO noted the experience and qualifications of proposed resources were assessed during the bid evaluation, in departure from these department's internal policies and MLUAs. OPO noted these solicitations were issued within a few days or weeks of the implementation of the revised MLUAs. These departments both cited the timing of the procurement planning process relative to their acceptance of the revised MLUAs as a factor.

119. Overall as a result of this review and analysis, the Procurement Ombud has made 4 recommendations to improve practices related to the replacement of resources.

Alexander Jeglic  
Procurement Ombud

## VIII. Organizational Responses

### Public Services and Procurement Canada (PSPC)

120. Public Services and Procurement Canada (PSPC) thanks the Office of the Procurement Ombud (OPO) on the review of the replacement of resources in professional services contracts.

121. As the central purchasing agent for federal departments and agencies, PSPC is committed to conducting procurements in an open, fair, and transparent manner. In response to previous audit reports, PSPC has instituted several changes and process improvements to address procurement deficiencies, including how it administers its methods of supply (MoS). New requirements have been incorporated to the Master Level User Agreement (MLUA), which include documenting that security requirements are in place and are met by all resources, providing clearer descriptions of work requirements and work activities, and improved procurement file documentation as part of the task authorization issuance process. We would like to thank OPO for acknowledging these improvements in their report.

122. PSPC does not accept OPO's second recommendation. While PSPC will amend the solicitation templates of the appropriate MoS in alignment with the recommended actions, these will not be reflected in MLUAs, as these are high-level arrangements that render mandatory the use of PSPC templates where detailed conditions and requirements, such as resource qualification and experience, are outlined. Once the templates are amended, PSPC will send a communiqué to all MoS users to advise them of the changes. For Recommendation 3, PSPC is proposing amending the modified recommendation to define the term "large" when qualifying "task authorization", such as to ensure that the application of a common and consistent standard is used when determining when to apply the condition identified in paragraph 5.3(d)(v) of the MLUA. The definition will be included as an instruction in the solicitation templates. *[Note from OPO: PSPC's Organizational Response has been incorporated its entirety. OPO amended Recommendations 2 and 3 in the final report to address PSPC's comments.]*

123. In paragraph 29, the findings related to the "incumbent supplier" may inadvertently imply preferential treatment and the current phrasing risks unintended perceptions. We recommend removing the final sentence in paragraph 29 to maintain neutrality and to avoid misinterpretation. Additionally, this last sentence is misleading. In fact, "incumbent supplier" refers to the supplier who held the contract that was in place prior to the solicitation in question, not to a supplier who was "previously awarded contracts for similar work" as stated in the draft report. *[Note from OPO: PSPC's Organizational Response has been incorporated its entirety. OPO removed the sentence noted in paragraph 29 in the final report to address PSPC's comments.]*

124. PSPC notes OPO's comments from paragraph 95 to paragraph 110. While PSPC will consider the concerns raised by OPO in the Unintended Consequences and Potential Solutions sections of the draft report as part of our professional services transformation action plan, PSPC does not support including these paragraphs in the report to be released as the assertions made in paragraph 95 to paragraph 110 are not supported by data and information contained in the documents reviewed by your office. Consequently, PSPC is of the view that these

paragraphs are speculative and out of the review's scope. As such, PSPC considers that these 2 sections should not be made public. *[Note from OPO: PSPC's Organizational Response has been considered but OPO will retain Paragraph 95-110 as part of the report].*

### **Employment and Social Development Canada (ESDC)**

125. Employment and Social Development Canada (ESDC) appreciates the Office of the Procurement Ombudsman's in-depth analysis and thoughtful observations. The department remains attentive to the insights provided and is committed to continuously applying best practices in the procurement of professional services. The report's recognition of effective practices at ESDC reinforces the department's ongoing efforts to uphold high standards of fairness, transparency, and accountability.

### **Global Affairs Canada (GAC)**

126. Global Affairs Canada (GAC) appreciates the thoroughness of the Office of the Procurement Ombud's review and acknowledges the importance of ensuring fairness, transparency and best value in federal procurement practices. GAC welcomes the opportunity to have participated in this review and supports the broader objective of strengthening procurement integrity across government.

### **Immigration, Refugees and Citizenship Canada (IRCC)**

127. IRCC has noted the recommendations of the Office of the Procurement Ombud and will update its internal procedures and provide training to its Contracting Officers accordingly. IRCC would like to note that, while the changes and new initiatives implemented by PSPC have great value, as per section 89 of the report, additional support is required from PSPC. Many of the resources/tools to be developed by PSPC as per the MLUAs are not available to client departments which makes implementation difficult and can impact client departments' ability to meet their obligations under the revised MLUAs. In order for client departments to be able to fully align themselves with the requirements of the MLUAs and other policy instruments, PSPC must provide the required tools and resources in a timely manner – ideally before or as changes or initiatives are announced.

### **Shared Services Canada (SSC)**

128. SSC agrees with OPO's recommendations and has taken steps to further ensure compliance with the Public Services and Procurement Canada (PSPC) Task-Based Informatics Professional Services (TBIPS) and Task and Solutions Professional Services (TSPS) frameworks, as well as with the terms of the Master Level User Arrangement (MLUA) between Shared Services Canada (SSC) and PSPC. Prior to the publication of the OPO's Procurement Practice Review of Replacement Resources in Professional Services Contracts report, SSC had initiated and will continue to maintain the practice of assessing only corporate experience at the solicitation stage for all task-based contracts, with individual resource qualifications evaluated at the task authorization stage.

129. Building on audit findings and SSC's commitment to continuous improvement, SSC has issued a new Procurement Information Notice (PIN) that details these requirements to support implementation by the procurement officers.

130. SSC provides awareness sessions for those contracting officers who are leveraging PSPC professional services supply arrangements (e.g. TBIPS and TSPS); these sessions have been offered on a regular basis and will continue to be provided at least yearly, and as necessary upon changes in the requirements. Following the release of internal communications via the Procurement Information Notice (PIN), an awareness session was held to explain the new processes relating to task authorization-based contracts. These sessions are also to be offered to new employees as part of their on-boarding.

131. To strengthen consistency of the application of the new PIN, SSC will also develop scenarios which will further explain how to apply the task authorization-based contracts procedures. These scenarios will also provide guidance for proper development of corporate experiences that support the business owner's requirements while not artificially restricting participation of smaller vendors.

132. The Compliance and Quality Assurance Program (CQAP) reviews a sampling of procurement files throughout the year to ensure consistency with policy and established best practices. Gate 1 of CQAP is the Pre-Solicitation Review (PS-R), where a sample of files are reviewed prior to issuing the solicitation. Its purpose is to assess the planned procurement strategy and solicitation documents to ensure compliance with government contract laws, regulations, and policies. The checklist for the PS-R has been updated to reflect professional services considerations, including verification that only corporate experience will be assessed at the solicitation stage of task-based contracts and that the individual resource assessment will be performed at the task authorization stage. CQAP will transition the PS-R into a Peer Review Program in Fall 2026, which will require procurement officers to conduct peer reviews, using the PS-R checklist, on a sample of their colleagues' files throughout the fiscal year.

133. Together, these measures will promote consistent procurement practices, strengthen oversight, and support sound decision-making across all professional services contracting activities.

134. SSC recognises some lack in its file documentation and has taken steps to improve its quality and completeness through tools, checklists, communication and the ongoing execution of its internal Compliance and Quality Assurance Program (CQAP). Composed of pre- and post-solicitation gates, this program is continuously being adapted and improved based on its own findings and the findings from internal and external audits.

135. SSC thanks the Office of the Procurement Ombud for its comments and recommendations, and for the opportunity to improve our processes and practices.

## IX. Acknowledgment

136. OPO wishes to express its appreciation to the staff at all organizations involved who provided information and extended assistance and cooperation to OPO during this review. OPO was pleased to receive exceptionally well-documented files as part of this review from PSPC, ESDC, IRCC, DND and GAC and noted opportunities for SSC to continue to improve on file documentation.

# Annex I

## ‘Bait and Switch’: Procurement Practice Review of Replacement Resources in Professional Services Contracts Response and Action Plan

Number	Recommendation	Response / Action Plan	Timeline for Implementation
1	<p>DND and SSC should review its policies and training, and update as required to ensure mandatory resource criteria address the minimum qualifications required by the selected method of supply.</p>	<p>[DND did not provide a response to the recommendation by OPO’s Regulatory deadline.]</p> <p><b>SSC</b> SSC has revised its policies, awareness sessions and tools to ensure that the minimum resource category qualifications required under the TBIPS and TSPS supply arrangements are explicitly stated as mandatory evaluation criteria when evaluating proposed candidates. These revisions have already been implemented in recent solicitations and will continue to be included moving forward.</p> <p>Under this revised approach, evaluations at the solicitation stage will focus solely on assessing the supplier’s corporate experience. The evaluation of individual resource qualifications will be conducted later, at the task authorization stage, using both the mandatory criteria established by PSPC in the overall procurement vehicle and any additional evaluation criteria specific to SSC’s requirement.</p>	<p><b>SSC</b> 1) Process – PIN Publication: Completed</p> <p>SSC has already published <i>Procurement Information Notice (PIN) 2025-04: Task Authorization-Based Contracts for Professional Services</i>, which is now in effect. The PIN provides contracting officers with clear guidance on the process to follow for task authorization-based contracts, which includes the proper use of TBIPS and TSPS task authorization-based contracts and alignment with the Master Level User Arrangement (MLUA) signed with PSPC. It reinforces that Corporate Experience must be evaluated at the solicitation stage using the corporate evaluation grid, while resource qualifications must only be evaluated at the task authorization stage in line with PSPC’s resource evaluation grid requiring the need for resource criteria to address the minimum qualifications. By codifying these requirements, the PIN supports consistent application of PSPC’s centralized methods of supply.</p> <p>2) Use of PSPC checklist and development of SSC scenarios: September 2025</p> <p>SSC will use the PSPC Procurement Case File Checklist – Professional Services Contracts as an internal self-assessment tool for procurement officers to verify that they have adequately followed the process for task authorization-</p>

		<p>To ensure that this process will be applied consistently going forward, SSC has developed and communicated a new Procurement Information Notice (PIN) detailing the process for procurement officers; this internal policy document will be updated as needed in the future. To complement this document and in order to equip the officers with the right tools for their daily work, SSC will use the latest PSPC Procurement Case File Checklist – Professional Services Contracts as a tool for procurement officers to perform a self-assessment on the process relating to task authorization-based contracts. SSC will also develop and present scenarios to support procurement officers in the implementation of the PIN, and will continue to offer awareness sessions, which have already been modified to integrate this new process and delivered to the current staff impacted by those changes.</p>	<p>based contracts for professional services under PSPC vehicles.</p> <p>SSC will also develop a document presenting various scenarios to provide guidance in the implementation of the MLUA, and practical direction on how to apply corporate experience at the solicitation stage, and assess the experience of resources and resource replacements at the task authorization stage.</p> <p>3) Internal Awareness Sessions: Completed</p> <p>SSC will continue to provide internal awareness sessions for contracting officers within the Internal and Digital Services Procurement (IDSP) division that process all of SSC’s professional services procurements. These ongoing sessions give practical instructions on applying the guidance in day-to-day work. Through these sessions, IDSP has already presented the new processes relating to task authorization-based contracts.</p> <p>These awareness sessions are also being offered to new employees as part of their onboarding, and will continue to be scheduled at least once a year, or upon a change in the process, to reinforce consistent practices and alignment with MLUA requirements and PSPC’s methods of supply.</p>
2	<p>PSPC should ensure that the solicitation templates for all methods of supply (MoS) include resulting contract clauses requiring the following when the assessment of specific individuals’ experience or qualifications are a factor in the selection of the best-value supplier:</p>	<p>Update solicitation templates for all methods of supply where it could be reasonably expected that a resource could be replaced to include the recommended clausuring.</p>	<p>Quarter 3 of fiscal year 2025-2026</p>

	<ul style="list-style-type: none"> <li>The replacement resource has qualifications and experience that meet or exceed those obtained for the originally proposed resource.</li> <li>A reason is on file that provides sufficient detail to demonstrate that the originally proposed resource is unavailable due to circumstances beyond the Bidder's control.</li> </ul>		
3	<p>PSPC should define what a "large" task-authorization (TA)-based contract is and develop guidance to assist Contracting Authorities in making this determination to ensure application of a common and consistent standard in determining when to apply the condition identified in paragraph 5.3(d)(v) of the MLUA. PSPC should include the definition as an instruction in the solicitation templates.</p>	<p>Develop a definition of "large" in the context of task authorization contracts to ensure a common and consistent standard in determining when to apply the condition in paragraph 5.3(d)(v) of the MLUA and include the definition as an instruction in the solicitation templates.</p>	<p>Quarter 3 of fiscal year 2025-2026</p>
4	<p>IRCC and SSC should discontinue the practice of evaluating individual resource qualifications at the bid evaluation stage for large TA-based contracts where multiple resources are required, in compliance with the terms of their MLUAs.</p>	<p><b>IRCC</b> IRCC will update its internal procedures (e.g., Bid Evaluation Procedure, Procurement Peer Review Process, Contract Planning and Advance Approval (CPAA)) and provide training to Contracting Officers as soon as large TA-based contracts are defined by PSPC in the revised Master Level User</p>	<p><b>IRCC</b> Internal procedures will be updated and training will be provided to Contracting Officers within 6 months of PSPC updating the MLUAs.</p> <p><b>SSC</b> 1) Process – PIN Publication: Completed</p> <p>SSC has already published Procurement Information Notice (PIN) 2025-04: Task Authorization-</p>

		<p>Arrangements (MLUAs) in order to ensure that resources for large TA-based contracts are evaluated based on a supplier's capacity to deliver and not an individual resource's qualifications as per section 5.3(d)(v) of the MLUA.</p> <p><b>SSC</b> SSC has initiated and will maintain its practice of evaluating only corporate experience at the solicitation stage for all task-based contracts and will evaluate individual resource qualifications only at the task authorization stage.</p> <p>To strengthen compliance and consistency, SSC has updated its Compliance and Quality Assurance (CQAP) Pre-Solicitation Review checklist to reflect professional services considerations, including verification that only corporate experience will be assessed at the solicitation stage of task-based contracts and that the individual resource assessment will be performed at the task authorization stage.</p> <p>This Pre-Solicitation Review checklist:</p> <ul style="list-style-type: none"> <li>• Supports adherence to the terms outlined in the MLUA related to evaluating only corporate experience at the solicitation stage for task-based contracts;</li> <li>• Promotes the consistent application</li> </ul>	<p>Based Contracts for Professional Services, which is now in effect. The PIN provides Contracting Officers with clear guidance on the process to follow for task authorization-based contracts, which includes the proper use of TBIPS and TSPS task authorization-based contracts, in alignment with the Master Level User Arrangement (MLUA) signed with PSPC. It reinforces that Corporate Experience must be evaluated at the solicitation stage using the corporate evaluation grid, while resource qualifications must only be evaluated at the task authorization stage in line with PSPC's resource evaluation grid. By codifying these requirements, the PIN supports consistent application of PSPC's centralized methods of supply.</p> <p>2) Internal Awareness Sessions: Completed</p> <p>SSC will continue to provide internal awareness sessions for contracting officers within the Internal and Digital Services Procurement (IDSP) that process all of SSC's professional services procurements. These ongoing sessions give practical instructions on applying the guidance in day-to-day work. Through these sessions, IDSP has already presented the new processes relating to task authorization-based contracts.</p> <p>These awareness sessions are also being offered to new employees as part of their onboarding, and will continue to be scheduled at least once a year, or upon a change in the process, to reinforce consistent practices and alignment with MLUA requirements and PSPC's methods of supply.</p> <p>3) CQAP Pre-Solicitation Program: Completed</p> <p>The current Compliance and Quality Assurance Program</p>
--	--	--	--

		<p>of procurement policies; and</p> <ul style="list-style-type: none"> <li>• Supports proper documentation of procurement files.</li> </ul>	<p>(CQAP) Pre-Solicitation Review checklist, where a sample of files are reviewed prior to issuing the solicitation, has been updated to include verification that for professional services requirements using TBIPS and TSPS, the evaluation criteria at the solicitation stage of task-based contracts is only assessing corporate experience and that the evaluation of individual resources is performed at the task authorization stage.</p>
--	--	---	--

# Appendix A – PSPC Master Level User Arrangement 2024

*The following is an example of the current MLUA required by PSPC.*

## **1.0 Preamble**

**1.1 WHEREAS** the Procurement Branch of PSPC maintains various professional services Supply Arrangements (Methods of Supply), the use of which is mandated by the Treasury Board of Canada in the Directive on the Management of Procurement.

**1.2 AND WHEREAS** this Master Level User Arrangement covers the Methods of Supply issued by PSPC as referenced on <http://www.tpsgc-pwgsc.gc.ca/app-acq/spc-cps/cadres-master-eng.html> provided that the Client Department is listed as an identified user within the applicable Method of Supply.

**1.3 AND WHEREAS** this Arrangement is not legally binding and places no legal obligation to the Participants. Any dispute regarding the interpretation or implementation of this Arrangement will be resolved only by consultation between the Participants and will not be referred to a tribunal or other third party for settlement.

**THEREFORE, the Participants accept the following:**

## **2.0 Cost**

**2.1** There is no cost for using these Methods of Supply within a Client Department's own authorities.

**2.2** For any solicitation of professional services where the Client Department is requesting for PSPC to be the Contracting Authority on the Client Department's behalf, costs may be incurred by the Client Department. Such solicitation will be detailed and governed by a separate Memorandum of Understanding.

## **3.0 Purpose of this Arrangement**

**3.1** To authorize the Client Department's personnel with Delegated Contracting Authorities to utilize the Methods of Supply.

**3.2** This Arrangement provides the Client Department authority to contract on behalf of the Government of Canada in regard to any contract resulting from the specified Method of Supply and subject to criteria detailed in each Method of Supply and within the delegated contracting authority provided in the Client Department individual Delegation of Contracting Authority form.

## **4.0 Points of Contact**

### **4.1 PSPC**

The Point of Contact for PSPC for communications and enquiries regarding the Methods of Supply is:

*Name:*

*Title:*

*Email:*

*Telephone:*

### **4.2 Client Department**

The Point of Contact for the Client Department for purposes of communications is:

Name:

Title:

Email:

Telephone:

### **4.3 Change of Contact Information**

Changes to Contact Information will be communicated to the Participants, in writing and will be formally updated when the Arrangement is renewed.

## **5.0 Responsibilities**

### **5.1 PSPC**

- a. Will respect the Public Services Values, the legislative and policy frameworks and the contracting principles of openness, fairness and transparency and comply with the conditions and guidelines of the Methods of Supply;
- b. Will be responsible for sponsoring the suppliers to help them obtain their corporate security clearances as part of the pre-qualification process for the Methods of Supply indicated above.;
- c. Will provide mandatory contracting templates for departmental use, at the following link: <https://canadabuys.canada.ca/en/professional-services-contracting>;
- d. Will provide training (as applicable) on the Methods of Supply;
- e. Will manage the framework of the Methods of Supply;
- f. Will conduct assessments of Client Department's use of the Methods of Supply, provide recommendations where required, and rescind this Arrangement if corrective measures are not implemented via a Management Action Plan approved by the Senior Designated Official for the Management of Procurement;
- g. Will maintain the e-portals;
- h. Will reserve the benefit to suspend or cancel the account of any user;
- i. Will provide a list of users to the Client Department, as required.

### **5.2 Client Department**

- a. Will ensure that its users complete the enrolment process for access to the e-portal, that its users have the authority to conduct procurement for the Client Department and that their access request is approved by the Senior Designated Official for the Management of Procurement;
- b. Will ensure its users take the appropriate training (<https://www.tpsgc-pwgsc.gc.ca/app-acq/spc-cps/pfel-otp-eng.html>);
- c. Will provide PSPC with an updated user list annually;
- d. Will provide PSPC all the contracting documents in accordance with the Assessment Framework (<https://www.tpsgc-pwgsc.gc.ca/app-acq/spc-cps/cdreval-assfram-eng.html> when compliance assessments are undertaken by PSPC;

e. Will produce and provide a Management Action Plan to PSPC as part of the compliance assessment process, in response to any recommendations PSPC makes pursuant the Assessment Framework when reviewing the Client Department's use of the Methods of Supply.

### 5.3 Contracting Authority

a. Will respect the Public Services Values, the legislative and policy frameworks governing government contracting and comply with the terms and conditions of the applicable Method of Supply;

b. Will act in accordance with the Common Business Rules (<https://www.tpsgc-pwpsc.gc.ca/app-acq/spc-cps/lroc-cbri-eng.html>) and in accordance with their internal delegated authorities and policies. Note that these Common Business Rules apply only to those Methods of Supply that are listed in the linked page;

c. Will use the Centralized Professional Services System ePortal to conduct supplier searches and establish its invited suppliers' list and will ensure that both the search filtering list and the final search results are included in the procurement file;

d. Will ensure that, prior to issuing any contract:

i. The PSPC-provided contracting templates provided at 5.11 are utilized, and that the templates are pulled directly from the noted website for each new contract, to capture regular changes to the mandatory templates.

ii. The decision to contract for professional services was made after internal resourcing strategies have been considered, and justification to contract has been documented in writing with executive-level approval. Where the contract is for IM/IT contingency workforce, that Treasury Board Secretariat's Office of the Chief Information Officer's (TBS-OCIO) Digital Talent Directive was followed, and that approval was received from TBS-OCIO to contract for IM/IT human resources;

iii. Where task-based contracts for individual resources on a per diem or other time and materials basis are requested, the decision to not pursue a solutions-based contract has been documented in writing with executive-level approval;

iv. All initiatives/projects for which the contract can be leveraged, as well as clear scope guardrails, are included in the Contract Statement of Work;

v. For large Task Authorization based Contracts where multiple resources are required, bid evaluations are focused on a supplier's capacity to deliver, and/or demonstrated past performance, and not on the assessment of individual resource qualifications (which should be evaluated only at the issuance of a Task Authorization);

vi. That for any resources proposed in a bid, the Client Department requires the bidder to provide proof of consent to be proposed, digitally signed by each resource, and citing the Request For Proposal number for the procurement in question;

vii. That payment and invoicing processes outlined in the Contract require timesheets used in fixed time/unit rate (i.e. fixed per diem rate for labour) contracts to include details regarding which hours are worked on each day (i.e. Monday: 8:00AM to 4:00PM instead of Monday: 8hrs);

viii. All documentation, including certifications required prior to contract award or at the TA stage, are held in the procurement file. This includes certification indicating that any proposed sub-contractors have given their permission to be proposed;

ix. Documentation is on file for all contracts with Security Requirements confirming that the supplier meets the identified organizational Security Requirements, and confirmation of valid personnel security clearance for all resources known at contract award has been documented in

writing prior to the start of any work. Security clearances must remain valid throughout the course of the work;

x. Ensure that all task-based contracts for professional services include a resource evaluation grid, outlining the criteria used to evaluate each resource category and that this evaluation grid is properly used and documented on file.

e. Will ensure that, prior to issuing a Task Authorization against any contract:

i. The Task Authorization Checklist template included at 5.11 is utilized and retained on the procurement file for each new Task Authorization;

i. All resource CVs or resumes have been evaluated in detail against the evaluation grids in the contract;

ii. A reasonable sample of resource CVs have been validated for accuracy, including proof of academic credentials and reference checks on claims of past employment and the file documented accordingly;

iii. Certification is on file indicating that resources have given their permission to be proposed for the work, digitally signed by each resource, and requiring that the contractor maintain evidence that can be requested by the Contracting Authority at any time;

iv. All invoices submitted by the Contractor for work performed under a Task Authorization in fixed time/unit rate (i.e. fixed per diem rate for labour) contracts include details regarding which hours are worked on each day (i.e. Monday: 8:00AM to 4:00PM instead of Monday: 8hrs);

f. Will ensure that a copy of every contract that includes security requirements and their subsequent amendments are sent to PSPC-Contract Security Program (CSP) within 2 working days of issuance;

g. Will ensure that the use of the Methods of Supply by their departmental users is monitored and that PSPC is notified of any inappropriate use;

h. Will ensure that PSPC is notified of any issues with respect to a contractor's performance.

## **6.0 Authority**

**6.1** The individual authorized to sign this Arrangement on behalf of the Client Department, also identified as the Authorized Representative, hereby certifies the Client Department's "authorized users" will comply with the provisions of this Arrangement.

**6.2** The Authorized Representative further certifies that Client Department's authorized users will not issue Call-ups or Contracts exceeding their delegated signing authority.

## **7.0 Arrangement in Effect**

**7.1** Both Participants concur that this Arrangement may be terminated by providing the other Participant with no less than three months prior written notice, except as provided for in Section 5.1(f), where no notice is required.

**7.2.** Both Participants agree that this Arrangement will expire three years from the latest signature date below, and may be amended from time to time by written consent.