

Office of the Procurement Ombud

Review of a Complaint:

Acquisition of Remotely Piloted Aircraft System (RPAS)
Advanced Operations Training –
EX VIGILANS SKY by the
Department of National Defence

August 2026



Government
of Canada

Office of the
Procurement Ombud

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du Canada

Bureau de l'ombud
de l'approvisionnement

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The Complaint

1. On February 19, 2026, the Office of the Procurement Ombud (OPO) received a written complaint from a Canadian supplier (the Complainant) regarding a contract awarded by the Department of National Defence (DND/the Department) for the provision of remotely piloted aircraft training. The contract was awarded on February 5, 2026 under a competitive process, and was valued at \$79,275.00 (taxes excluded).
2. The Complainant contacted OPO stating that it believed its proposal was not fairly assessed despite offering a bid price lower than the winning bid and meeting all mandatory requirements. The Complainant asserted that its bid was evaluated as non-compliant on multiple mandatory criteria due to an alleged lack of supporting documentation, even though the solicitation did not clearly require such documentation to be included.
3. The complaint raised the following issues:
 - Issue 1: Did the solicitation adequately describe what bidders had to submit to demonstrate compliance with mandatory criteria?
 - Issue 2: Did DND properly evaluate the Complainant's bid?
4. On February 20, 2026, OPO confirmed the complaint met the requirements of the [*Procurement Ombudsman Regulations*](#) (the Regulations) and it was considered filed.

Mandate

5. This Review of Complaint was conducted under the authority of paragraph 22.1(3)(c) of the *Department of Public Works and Government Services Act* and sections 7 to 14 of the Regulations.
6. Pursuant to subsection 9(2) of the Regulations, the Procurement Ombud requested that DND provide departmental records associated with the procurement and the award of the contract in question, as well as DND procurement policies and guidelines in effect at the time of the solicitation. The Procurement Ombud also requested that the Complainant provide any additional information not submitted as part of the complaint.
7. The chronology of events and the findings in this report are based on the records provided by the Complainant and DND, as well as relevant publicly available information. The failure by either the Complainant or DND to disclose any relevant records or information could impact the findings of this report.

Chronology of Events

8. On December 12, 2025, DND issued a Request for Quotation (RFQ) to 9 suppliers (not including the Complainant). The RFQ indicated that the solicitation would close on January 5, 2026 at 12:00 pm Mountain Standard Time. Bidders were required to meet 17 mandatory criteria and submit their pricing. The lowest price compliant bid would be recommended for contract award.
9. On December 16, 2025, DND answered 3 questions about the RFQ and provided the response to all invited suppliers.
10. On January 4, 2026, DND issued an extension to the closing date from January 5, 2026, to a new deadline of January 7, 2026 at 3:00 pm.
11. On January 7, 2026, the solicitation closed. 6 bids were received. Of the 9 suppliers invited to participate, 3 submitted bids, while 3 additional bids were received from suppliers that were not included on the original invitation, including the Complainant.
12. On January 20, 2026, DND provided an update to the 6 bidders, including the Complainant, advising that their bid packages were with the evaluation team for evaluation.
13. On January 27, 2026, a DND contract management officer completed a review of the evaluation and determined that the contracting authority could proceed with informing non-compliant bidders and contract award. In the same correspondence, the contract management officer identified concerns regarding the wording of 2 mandatory criteria and provided suggested revisions for future solicitations.
14. On January 29, 2026, DND issued a regret letter to the Complainant advising that its bid did not meet some of the mandatory requirements and the contract would be awarded to another bidder. The email did not identify the specific criteria with which the bid was found to be non-compliant.
15. On January 29, 2026, the Complainant sent a request for debriefing to DND and the debrief was held the same day.
16. On February 5, 2026, the contract was awarded to the successful bidder.
17. On February 19, 2026, the Complainant submitted a written complaint to OPO, which was considered filed on February 20, 2026.
18. On March 5, 2026, OPO advised DND and the Complainant that it launched a review of the complaint.

Analysis of Issues and Findings

Issue 1: Did the solicitation adequately describe what bidders had to submit to demonstrate compliance with mandatory criteria?

19. The Complainant stated:

“Referring to the Annex Technical Criteria in the [solicitation] document [...] which states that, ‘Proposals will be reviewed to determine whether it meets all mandatory requirements identified in this solicitation. Only proposals that clearly demonstrate compliance with each mandatory criterion listed below must be deemed responsive and advance to the rated and financial evaluation stages.’ Nowhere in the application guidelines does it state that supporting documents must be attached to the proposal. [DND] admitted to this, commenting that the instructions were indeed vague and unclear.”

20. DND stated:

“We have completed the review of the complaint, including a thorough examination of the contract file and all supporting documentation. While we reviewed some issues within the contracting documents, these would not have resulted in the complainant’s bid meeting the minimum mandatory requirements. For fairness and consistency across the evaluation process, we cannot make assumptions or interpret missing information. Evaluators must rely solely on the content provided within each bidder’s submission package. In this case, the complainant’s proposal did not provide the necessary information to be considered compliant with the mandatory criteria.”

21. The Treasury Board Directive on the Management of Procurement (DMP) requires procurements to be conducted in a manner that is fair, open, and transparent, and requires contracting authorities to conduct procurements based on these principles. The DMP also assigns contracting authorities the responsibility for designing and conducting the bid evaluation process.

22. The DMP further states that business owners are responsible for developing clear statements of work and technical evaluation criteria. In conjunction with the DMP’s emphasis on fairness, openness, transparency, and sound stewardship, these requirements support the principle that solicitation documents should communicate evaluation requirements with sufficient clarity to enable bidders to understand what information must be submitted to permit an assessment of compliance.

23. DND's Procurement Administration Manual states that the contracting authority is responsible for defining the "goods to be acquired in clear and concise terms" and "to ensure that adequate technical and performance specifications are included and mandatory requirements are clearly defined in the evaluation criteria."

24. The solicitation instructed bidders (referred to as "offerors") as follows:

"Offerors should:

- i. demonstrate their understanding of the requirements contained in the solicitation of offers;
- ii. concisely explain how they will meet these requirements; and
- iii. address the points that are subject to the evaluation criteria against which the Offer will be evaluated. Simply repeating a statement contained in the solicitation of offers is not sufficient."

25. The solicitation also included the following provision regarding the completeness of bids (referred to as "offers"):

"After the closing date and time of this solicitation of offers, Canada will examine the Offer to determine completeness. The review for completeness will be limited to identifying whether any information submitted as part of the offer can be accessed, opened, and/or decoded. This review does not constitute an evaluation of the content, will not assess whether the Offer meets any standard or is compliant with all solicitation requirements, but will be solely limited to assessing completeness. Canada will provide the Offeror with the opportunity to submit information found to be missing or incomplete in this review within two business days of notice. The offer will be reviewed and deemed complete when the following elements have been submitted by the offeror:

- a. certifications and securities required at offer closing are included;
- b. offers are properly signed, that the offeror is properly identified;
- c. acceptance of the terms and conditions of the solicitation of offers and resulting contract;
- d. that all documents (including certifications, declarations and proofs) created prior to offer closing but due to technical difficulties Canada was unable to receive them, have been properly submitted and received by Canada."

26. The solicitation instructions regarding the preparation of bids informed bidders that they were expected to provide information explaining how their offers met the solicitation requirements and addressed the points subject to evaluation, and that merely restating the requirements would not be sufficient. In addition, the solicitation advised bidders that a completeness review would be limited to determining whether submitted information

could be accessed, opened, and/or decoded and would not assess compliance with the solicitation requirements. In OPO's review of the provided documentation, there were no indications on the file that the Complainant's bid, or any portion thereof, could not be accessed, opened, and/or decoded.

27. The clarity of the mandatory criteria is also relevant in determining whether the solicitation adequately described what bidders were required to submit. While solicitation instructions may establish a general obligation to demonstrate compliance, the evaluation criteria themselves inform bidders of the specific requirements that must be addressed in their proposals. Accordingly, bidders' ability to submit responsive bids depends not only on understanding that supporting information must be provided, but also on the extent to which the mandatory criteria clearly identify the qualifications, certifications, capabilities, or other requirements that must be demonstrated.
28. As a matter of good procurement practice, departments should identify the evidence or documentation that may be submitted to substantiate compliance with evaluation criteria. Doing so promotes transparency, supports consistent proposal preparation and evaluation, and reduces the risk of disputes regarding whether sufficient information was provided to demonstrate compliance.
29. OPO reviewed the solicitation document including the Statement of Work (SOW) and the mandatory criteria found in "Annex Technical Criteria," to determine whether it adequately described the information bidders were required to provide to demonstrate compliance with the mandatory criteria.
30. Several mandatory criteria required bidders to demonstrate specific certifications, authorizations, qualifications, or other requirements, including the following:
 - The Service Provider must be authorized to deliver Transport Canada compliant Advanced RPAS Operations training and Transport Canada Flight Reviews.
 - All instructors must hold a valid Transport Canada Pilot Certificate – Advanced Operations.
 - All instructors conducting Flight Reviews must be recognized Transport Canada Flight Reviewers.
 - All instructors must hold a valid Vulnerable Sector Screening (VSS) issued within twelve (12) months of course start.
31. The mandatory criteria, when read in conjunction with the solicitation instructions, adequately described the information that bidders were required to provide in their

proposals. The instructions required bidders to demonstrate their understanding of the requirements, explain how they would meet them, and clearly demonstrate compliance.

32. For example, the requirement that “All instructors must hold a valid Transport Canada Pilot Certificate – Advanced Operations” clearly indicates that bidders were required to demonstrate that their proposed instructors held the specified certification. Similarly, the requirement that “All instructors conducting Flight Reviews must be recognized Transport Canada Flight Reviewers” clearly informed bidders that they were required to demonstrate that their proposed Flight Review instructors held such recognition.
33. While the criteria did not generally prescribe specific documentary evidence (e.g., certificates, licenses, insurance certificates, or plans), they did identify the attributes, qualifications, insurance, and plans that had to be demonstrated. Consequently, bidders should have been able to determine the type of information required to demonstrate compliance, even if other bidders chose different forms of supporting documentation. The criteria therefore appear sufficiently clear from the perspective of understanding what must be demonstrated, rather than how exactly it must be evidenced.
34. However, OPO observed structural issues with the solicitation that may have contributed to uncertainty; for instance, OPO found that there were mandatory requirements listed in the SOW. The “mandatory requirements” reflected in the “Annex Technical Criteria” and those in the SOW are aligned in substance but differ in scope. The SOW expands the requirements into more stringent obligations by requiring proof (e.g., submission of copies), and imposing ongoing compliance obligations and replacement requirements where deficiencies arise. For example, the following is from the SOW:
 - “The Service Provider must provide copies of each instructor’s valid Transport Canada Pilot Certificate – Advanced Operations, including the certificate number and date of issuance. If instructors will conduct Flight Reviews, proof of authorization as a Transport Canada-recognized Flight Reviewer must also be provided.”
35. Read together, the “Annex Technical Criteria” and the SOW describe the qualifications, certifications, authorizations, and other requirements that bidders were expected to demonstrate in order to establish compliance.
36. DND met the standard to adequately describe the mandatory technical criteria; however, it did so only marginally. Several aspects of the solicitation’s structure negatively impacted clarity. Not all mandatory technical criteria were located in the same part of the solicitation, with some being located in the “Annex Technical Criteria” while others were in the SOW. For some criteria listed in the “Annex Technical Criteria”, additional components of the

mandatory requirements were included in the SOW. Additionally, in instances where mandatory requirements were referenced in multiple areas of the solicitation, the language of each reference was incongruent. These practices increase the risk that bidders are unable to prepare compliant proposals, which compromises the fairness and effectiveness of the competitive process.

37. In instances where the solicitation documents are not clear, the Canadian International Trade Tribunal (CITT) has found that bidders bear the onus of seeking clarification from the contracting department:

“the Tribunal has [found] ‘ . . . bidders bear the onus to seek clarification of matters considered ambiguous or uncertain.’ That onus exists regardless of whether the ambiguity engages the bidder’s proposal or that of the bidder’s competitor. [...]”

38. The contracting file included the following questions submitted to the Department during the bid solicitation period, however, it is not clear which bidder asked the questions. The Complainant did not provide evidence that it had submitted these questions:

1. “Please can you describe the age range for the youth participating in this training session?”
2. “Will there be youth under 16 years of age in attendance?”
3. “If a youth camp atmosphere is preferable, may we quote with this supported effort in mind?”

39. There were no other questions included in the contracting file. While OPO identified aspects of the solicitation that negatively impacted clarity, the CITT has consistently found that bidders bear the onus of seeking clarification of solicitation requirements that they consider ambiguous or uncertain. The questions contained in the contracting file did not relate to the mandatory criteria at issue. Accordingly, to the extent that the Complainant considered the mandatory criteria unclear or was uncertain as to the information required to demonstrate compliance, it was incumbent upon the Complainant to seek clarification from DND during the solicitation period.

Finding Issue 1

40. The Procurement Ombud found that the solicitation adequately described the information bidders were required to provide in order to demonstrate compliance with the mandatory criteria. The solicitation informed bidders that they were required to provide information demonstrating compliance with the mandatory requirements, and that merely repeating the requirements would not be sufficient. Although the criteria did not explicitly prescribe the specific evidence to be submitted, they identified the qualifications, certifications, insurance coverage, and plans that bidders were required to demonstrate. However, DND

should have provided more detailed guidance regarding the types of documentation that could be submitted to demonstrate compliance, and should have better structured the solicitation to ensure mandatory criteria were fully described in the appropriate location (i.e. in the evaluation criteria rather than the SOW). Doing so would have reduced the potential for ambiguity and better supported bidders in preparing responsive proposals.

41. Nevertheless, the Procurement Ombud finds that bidders were provided with sufficient information to understand what was required to demonstrate compliance with the mandatory criteria. To the extent that the Complainant considered any aspect of the RFQ unclear or was uncertain as to the information required to demonstrate compliance, it bore the onus to seek clarification from the Department during the solicitation period.

Issue 2: Did DND properly evaluate the Complainant's bid?

42. The Complainant stated:

“Our proposal was not selected as the winning bid despite being \$30,000 less than the winning bid while providing the same services and meeting all the mandatory criteria.

Despite directly addressing and demonstrating our ability to competently carry-out the work with qualified trainers, we received "Not Met" on 7 out of the 17 mandatory evaluation criteria. Following a review of our proposal [by DND] it came to light that for 6 out of the 7 "Not Met" criteria, the issue was a lack of supporting documentation in our application. Referring to the Annex Technical Criteria [...] which states that, "Proposals will be reviewed to determine whether it meets all mandatory requirements identified in this solicitation. Only proposals that clearly demonstrate compliance with each mandatory criterion listed below must be deemed responsive and advance to the rated and financial evaluation stages." Nowhere in the application guidelines does it state that supporting documents must be attached to the proposal... Additionally, we received a "Not Met" on the criteria "The Service Provider must be a legally registered Canadian business authorized to operate in the Yukon Territory." Our business number was included with the application in the document [attached]. This criteria was changed to "Met" during the review, clearly indicating that our proposal was not reviewed diligently. [...]"

43. As noted at paragraph 20 above, DND stated:

“While we reviewed some issues within the contracting documents, these would not have resulted in the Complainant's bid meeting the minimum mandatory requirements. For fairness and consistency across the evaluation process, we cannot make assumptions or interpret missing information. Evaluators must rely solely on the content

provided within each bidder's submission package. In this case, the Complainant's proposal did not provide the necessary information to be considered compliant with the mandatory criteria."

44. DND's Procurement Administration Manual states under section 3.3.9.8 that contracting authorities are responsible to ensure the Technical Authority (TA) "...evaluates all quotes received against the requirement and any evaluation criteria that were provided in the [request], except for the financial evaluation."
45. In assessing whether the Complainant's bid was evaluated in accordance with the evaluation approach and instructions set out in the solicitation documents, the Procurement Ombud is bound by Section 12(2) of the Regulations which states:

"The Procurement Ombudsman shall not substitute his or her opinion for the judgment of the persons involved in the acquisition process for the contract in relation to the assessment of any bid, unless there is insufficient written evidence to support that assessment or the assessment is unreasonable."
46. To determine if DND evaluated the Complainant's proposal in accordance with the evaluation approach and instructions set out in the solicitation documents, the Procurement Ombud will consider criteria set out by the CITT in *CAE Inc. v. Public Works and Government Services*, including whether evaluators "have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way."
47. On December 12, 2025, DND sent the RFQ to a limited list of 9 suppliers that it had identified. The Complainant was not among those suppliers; however, the Complainant still submitted a bid in response to the RFQ, and DND accepted and evaluated the bid.
48. The RFQ included 17 mandatory criteria that prospective bidders had to meet to be considered for contract award. The Complainant was told it was non-compliant on 7 of the 17 mandatory criteria. DND therefore did not consider the Complainant's bid for contract award.
49. The Complainant requested and received a debriefing from DND. The debriefing covered a number of topics including the Complainant's disagreement with the evaluation of mandatory requirements, in particular the "proof and inclusion of documentation in the bid." The contracting authority noted some examples of missing documentation, for example "while the company confirmed that their instructors held valid Transport Canada Pilot Certificate[s], no copies were included in the bid. Same with 'flight reviewer certificate,' as well as insurance and a few others."

50. While reviewing the contracting file to assess whether the Complainant's bid was properly evaluated, OPO noted two features of the solicitation and evaluation process that affected the evaluation of bids: (1) some mandatory criteria were based on future obligations; and (2) evaluators applied mandatory criteria inconsistently when evaluating different bids.

Some mandatory criteria were based on future obligations

51. OPO observed instances of conflicting information regarding deliverable dates between the Annex Technical Criteria and the SOW.
52. Two mandatory technical criteria required bidders to possess or demonstrate capability, but the detailed proof of these elements was expressly required later on (i.e., after bid closing and contract award) as pre-course deliverables in the SOW. This created a situation where compliance at evaluation relied, at least in part, on the bidder's assertions regarding actions or evidence that would only materialize after contract award.
53. The following were included as mandatory criteria in the Annex Technical Criteria:
- "The Service Provider must maintain a minimum of \$2M Commercial General Liability Insurance covering all RPAS training and field operations."
 - "The Service Provider must provide a site-specific Safety Plan covering airspace, ground safety, weather contingencies, and emergency procedures."
54. As written, evidence of the completion of these mandatory technical criteria could reasonably be interpreted as being required with the bid.
55. In contrast, the SOW provides specific deadlines for each of these criteria, which occur after bid submission:
- "The Service Provider must carry a minimum of \$2 million in commercial general liability insurance. Proof of valid insurance must be submitted **prior to contract award and maintained throughout the period of performance.**" (emphasis added)
 - "The Contractor must submit a site-specific Safety Plan **no later than twenty-one (21) calendar days before the serial.**" (emphasis added)
56. The inclusion of mandatory criteria based on future obligations negatively impacts fairness. Bidders are being evaluated on requirements that cannot be equally demonstrated at bid closing and instead rely on assertions of future performance. Bidders are not clearly informed which requirements must be demonstrably proven versus those that will be satisfied later through contract execution. As a result evaluators must exercise discretion in the bid evaluation phase. Both these factors increase the risk that bids are evaluated inconsistently, potentially leading to incorrect contract award.

57. In circumstances where a solicitation contains multiple references to a mandatory requirement, departments should ensure that those references are consistent and use congruent language. For example, any deadlines associated with the requirement should be identical throughout the solicitation.
58. In its 2021 Procurement Practice Review of Immigration, Refugees and Citizenship Canada, OPO observed that mandatory criteria should be limited to the essential qualifications necessary to conduct the work. Including mandatory criteria that were not essential to fulfilling the requirement can unnecessarily burden bidders, increase the risk of non-responsive bids, and may reduce competition.

Evaluators applied mandatory criteria inconsistently when evaluating different bids

59. Based on the documentation provided by DND, OPO was unable to determine with certainty which mandatory criteria formed the basis for the decision to deem the Complainant's proposal non-responsive. No consensus evaluation was included in the file, and the individual evaluation records demonstrate significant disagreement between the 2 evaluators, with only 4 mandatory criteria receiving consistent assessments (2 "met"; 2 "not met"). While the Complainant stated that 7 mandatory criteria were identified during the debriefing as having been non-compliant (later 6 criteria following a reassessment by DND), the debriefing notes provided by DND do not specify which criteria were discussed.
60. Consequently, OPO was unable to verify which mandatory criteria ultimately resulted in the proposal being rejected or how DND reconciled the differing evaluator assessments in reaching its final determination.
61. OPO additionally found that evaluators reviewed some mandatory criteria inconsistently between bidders, principally because the SOW included mandatory requirements and that some mandatory requirements were based on future obligations.
62. For example, 1 mandatory criterion stated that: "All instructors must hold a valid Transport Canada Pilot Certificate – Advanced Operations."
63. Evaluators found the following concerning the Complainant and another bidder:
 - a. The Complainant was found non-compliant: "Not Met (evidence not provided). Bid states all trainers are Pilots, but does not include copies of instructor certificates."
 - b. Another bidder was found compliant: "Met (asserted). [Bidder] indicates they will deliver Advanced operations training and Flight Reviews (which presupposes Advanced-qualified instructional staff)."

64. The evaluation records indicate that another bidder's proposal was deemed compliant based on an inference that its personnel possessed the required qualifications, whereas the Complainant was rejected for failing to provide documentary evidence of the same qualification.
65. Furthermore, in the evaluation of this criterion, the evaluators used the expression "Met (asserted)" in their evaluation. This is a similar expression used in the evaluation of other criteria to delineate between where evidence was provided to substantiate a mandatory criterion and where a "statement" or "confirmation" was used. The example above shows an instance where this was used unfairly. This methodology was repeated through the entire evaluation, not just for the Complainant, but for other bidders as well.

The Complainant's bid

66. Following Section 12(2) of the Regulations, OPO reviewed the Complainant's bid against the mandatory requirements of the RFQ to test whether it should have been considered for contract award.
67. As discussed in the analysis of Issue 1 above, the solicitation adequately described the information bidders were required to submit to demonstrate compliance with the mandatory technical criteria. After reviewing the Complainant's bid package, OPO found that the Complainant did not submit the necessary substantiation to be considered for contract award. The following are two examples:
 1. Mandatory criterion: "All instructors must hold a valid Transport Canada Pilot Certificate – Advanced Operations." The requirement clearly signalled that bidders were required to demonstrate that their proposed instructors held the specified certification at bid closing. While the Complainant stated the instructors held the valid certificate, their bid did not include copies of the proposed instructors' certificates or other documentation demonstrating that this requirement was met, which was explicitly requested in the SOW at 8.c.1.
 2. Mandatory criterion: "All instructors conducting Flight Reviews must be recognized Transport Canada Flight Reviewer." While the Complainant stated the instructors held the valid certificate, they did not provide any proof with their bid which was explicitly requested in the SOW at 8.c.1.
68. Because the Complainant's bid failed to demonstrate compliance with at least two clearly stated mandatory criteria, the bid could not reasonably have been found compliant and would not have been eligible for award.
69. The CITT has long held that mandatory requirements are generally a matter of strict compliance. If a solicitation identifies a criterion as mandatory, a bid must meet it as

submitted. The Tribunal has repeatedly stated that evaluators cannot waive, ignore, or reinterpret mandatory requirements after bid closing. For the Complainant to have been considered for contract award, it would have had to meet each of the 17 mandatory criteria, without exception.

70. Further, the CITT has found that it is not enough for the bid to “assert” or “claim” that the bidder meets the criteria. It must be demonstrated with evidence. In *Dymech Engineering*, the CITT ruled that when a supplier has to “demonstrate” that it meets mandatory criteria, it is not enough for the supplier to merely assert that it has the certification.

71. Additionally, the solicitation clearly required bidders to complete and submit an Offeror Submission Form and Offeror Declaration Form. Specifically:

“Each Offeror is required to include the Offer Submission Form (Annex Offer Submission Form) with their offers. If Canada determines that the information required by the Offer Submission Form is incomplete or requires correction, Canada will provide the Offeror with a deadline to do so.”

[...]

“Each Offeror is required to include the Offeror Declaration Form (Annex Offeror Declaration Form) in which it certifies to Canada all the information required by the Offeror Declaration. If Canada determines that the information required by the Offeror Declaration Form is incomplete or requires correction, Canada will provide the Offeror with a deadline to do so.”

72. OPO found no evidence that the Complainant submitted either the Offeror Submission Form or the Offeror Declaration Form with its bid. The failure to submit these mandatory forms constitutes a material omission. These forms contain essential information, certifications, and declarations required by the solicitation, and their absence would render the bid non-compliant.

73. The solicitation expressly stated that:

“Canada will assess offers in accordance with the entire requirement of the solicitation of offers including the Technical and Financial evaluation criteria. Canada will declare any offer that fails to meet all mandatory solicitation requirements non-compliant.”

74. In these circumstances, it was reasonable for DND to conclude that the Complainant had failed to demonstrate compliance with mandatory solicitation requirements and to assess the bid as non-compliant. Consistent with the terms of the solicitation, a bid that failed to satisfy all mandatory requirements could not be considered further.

Finding Issue 2

75. To determine whether DND properly evaluated the Complainant's bid, the Procurement Ombud had to consider whether there was sufficient written evidence to support the evaluation, and whether it was unreasonable. Additional considerations include whether there was evidence that the evaluators failed to apply themselves, ignored vital information, wrongly interpreted the requirement, used undisclosed criteria or acted in a procedurally unfair manner.
76. The Procurement Ombud found that while there were several issues identified in the evaluation process, DND reasonably assessed the Complainant's bid as non-compliant. The solicitation clearly required bidders to submit mandatory forms and provided sufficient information for bidders to understand what was required to demonstrate compliance with mandatory criteria. Additionally, the solicitation expressly stated that any bid failing to meet those requirements would be declared non-compliant. OPO found no evidence that the Complainant submitted the required Offeror Submission Form or Offeror Declaration Form. In addition, the Complainant did not provide documentation demonstrating that its proposed instructors held the mandatory Transport Canada Pilot Certificate – Advanced Operations, nor documentation demonstrating that the proposed instructors were recognized Transport Canada Flight Reviewers. Given these crucial omissions, DND reasonably concluded that the Complainant had failed to demonstrate compliance with mandatory solicitation requirements. As a result, the bid could not be considered further.
77. OPO observed instances where evaluators did not apply the same standards in assessing certain mandatory requirements of the RFQ. For example, in some cases a bidder was deemed compliant with a mandatory criterion based on a statement or confirmation alone, while in other cases a bidder was deemed non-compliant for failing to provide documentary evidence in support of the same criterion. Nevertheless, at least 2 criteria clearly required that documentation be provided which was not included with the Complainant's bid. Accordingly, notwithstanding the evaluation deficiencies identified above, the Complainant's bid could not have been eligible for award.

Conclusion

78. Regarding Issue 1, the Procurement Ombud found that the solicitation adequately described the information bidders were required to provide to demonstrate compliance with the mandatory criteria. Although the solicitation did not explicitly prescribe the specific evidence that bidders were required to submit, it clearly informed bidders that they were required to demonstrate compliance with the mandatory requirements and that merely

repeating the requirements would not be sufficient. At the same time, several aspects of the solicitation's structure detracted from the overall clarity of the requirement. Mandatory criteria were presented in multiple sections of the solicitation, certain requirements were supplemented by additional conditions located elsewhere in the document, and language describing the same requirement was not always consistent across references. These practices increased the potential for confusion and the risk that bidders might misunderstand what was required to prepare a compliant proposal. However, to the extent that the Complainant considered any aspect of the solicitation ambiguous or was uncertain as to the information required to demonstrate compliance, it bore the responsibility to seek clarification from the Department during the solicitation period.

79. Regarding Issue 2, the Procurement Ombud found that DND reasonably assessed the Complainant's bid as non-compliant. Several issues were observed in the evaluation where evaluators applied different standards when assessing compliance with certain mandatory criteria, accepting statements or confirmations of compliance from some bidders while requiring documentary evidence from others. While these inconsistencies undermined the transparency and defensibility of the evaluation process and should have been avoided, they did not affect the outcome regarding the Complainant's bid. The Complainant did not submit mandatory solicitation forms and failed to provide documentation demonstrating compliance with at least 2 mandatory technical criteria. As the solicitation expressly provided that any bid failing to meet all mandatory requirements would be declared non-compliant, DND's assessment was consistent with the terms of the solicitation.

Recommendation

80. Given that the Procurement Ombud found that the solicitation adequately described what bidders were required to submit and that DND reasonably assessed the Complainant's bid as non-compliant, there is no basis to recommend compensation pursuant to paragraph 13(1)(a) or (b) of the Regulations. Although OPO identified deficiencies in the evaluation process, those deficiencies did not affect the outcome of the procurement with respect to the Complainant and therefore do not justify a recommendation for compensation.

Other Observations

Was the Complainant an eligible bidder?

81. This procurement followed a traditional competitive process, whereby a solicitation was issued to a limited number of prospective bidders identified by the Department.

82. The Complainant was not included in the original invitation. The Complainant nevertheless submitted a bid in response to the RFQ; however, the contracting file contains no evidence that the Complainant requested to be formally included in the procurement prior to submitting its bid.
83. The key fairness concern arising in this case is that there is no assurance that the Complainant, or any other bidder not formally included in the procurement process, was aware of all procurement-related communications, including amendments, questions, and answers. Providing the same information to all bidders at the same time is a fundamental element of fairness and transparency, as it ensures that all participants have an equal opportunity to prepare responsive bids.
84. Where a supplier becomes aware of a procurement to which it was not formally invited, good procurement practice is for the supplier to contact the contracting authority and request to be formally included in the process. Doing so helps ensure that the supplier receives all solicitation documents, amendments, questions and answers, and other procurement-related communications issued to invited bidders.
85. The Complainant submitted a bid to DND, and DND accepted the bid for evaluation. By accepting and evaluating the bid, DND effectively permitted the Complainant to participate in the procurement and did not exclude it from consideration.