



Office of the Procurement
Ombudsman

Bureau de l'ombudsman
de l'approvisionnement



What to Expect: Complaint Reviews

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INTRODUCTION

This guide outlines the Office of the Procurement Ombudsman's (OPO) process and timelines for conducting reviews of complaints after a review has been launched. This guide also provides an overview of the expectations for all parties involved.

1.1 The Procurement Ombudsman's mandate

Paragraph 22.1(3)(b) and (c) of the *Department of Public Works and Government Services Act* states:

The Procurement Ombudsman shall, in accordance with the regulations,

(b) review any complaint respecting the compliance with any regulations made under the *Financial Administration Act* of the award of a contract for the acquisition of materiel or services by a department [...];

(c) review any complaint respecting the administration of a contract for the acquisition of materiel or services by a department;

1.2 What type of complaints can OPO review?

OPO reviews two types of complaints:

- complaints on the award of a federal contract where the value of the contract is less than \$25,000 for goods or less than \$100,000 for services; and
- complaints on the administration of a federal contract for the acquisition of materiel or services where the interpretation and application of the terms and conditions or the scope of work is not in dispute. There are no dollar thresholds with regard to the review of the administration of a contract.

1.3 Who can file a complaint?

In order to file a complaint, a supplier must:

- have a place of business in Canada;
- have bid on the contract unless it was prevented from doing so because of the actions of the contracting department (in the case of a complaint about the award of a contract);
- be a party to the contract (in the case of a complaint about the administration of a contract); and
- have filed the complaint in writing, containing the required information within the regulated timelines.

Looking for information on how to file a complaint? Call the Office's toll free number (1-866-734-5169) for information.

1.4 Which federal organizations does OPO review?

OPO reviews the award and administration of contracts of organizations listed in schedules [I](#), [I.1](#) and [II](#) of the *Financial Administration Act*. However, Section 3 of the *Procurement Ombudsman*

Regulations (Regulations) stipulates that the Procurement Ombudsman shall not review complaints in respect of the following departments:

- a. the Canadian Security Intelligence Service; and
- b. the staff of the Senate and the House of Commons.

WHAT TO EXPECT – OPO AND THE COMPLAINANT

2.1 What the complainant can expect from OPO

OPO will:

- explain the process and timelines OPO must adhere to;
- request additional documents from the complainant not submitted as part of the complaint, including all communications between the complainant and the contracting organization regarding the contract in question;
- remain neutral and objective throughout the review; and
- provide a copy of the review report to the complainant, the minister of the contracting organization and the Minister of Public Services and Procurement, as required by the Regulations.

2.2 What OPO expects from the complainant

The complainant shall provide to OPO, in a timely manner, all information and documents required by the Regulations and relevant to the review.

WHAT TO EXPECT – OPO AND THE CONTRACTING ORGANIZATION

3.1 What the contracting organization can expect from OPO

OPO will:

- provide deputy head of the contracting organization with a copy of the complaint and any associated documents;
- request the contracting organization respond to the issues raised in the complaint, in writing, as per the Regulations;
- request copies of all documents associated with the contract in question;
- request copies of the policies, standards, guidelines and procedures governing the organization's procurement that were in effect at the time;
- remain neutral and objective throughout the review;
- adhere to Government of Canada and organizational security and information management requirements regarding the handling and safeguarding of sensitive information; and

- provide a copy of the review report to the complainant, the minister of the contracting organization and the Minister of Public Services and Procurement, as required by the Regulations.

3.2 What OPO expects from the contracting organization

The contracting organization shall:

- provide copies of information and documents, or access to information and documents, within the timelines prescribed in Section 11 of the Regulations, which will be specified in the review launch letter sent to the deputy head of the organization;
- provide OPO with the entire file (including procurement, program and financial files) related to the contract in question, as well as the organization's procurement-related policies, standards, guidelines and procedures; and
- inform OPO in a timely manner of matters pertinent to the review of the complaint.

Timely Access to Information

Sections 14 and 22 of the Regulations require the Procurement Ombudsman to complete the review of a complaint and issue a report within 120 working days after the day on which the complaint is filed. Therefore, timely access to information and documents is crucial to the review process. The contracting organization will be informed of the timelines to provide all requested information and documents in the launch letter sent to the deputy head of the organization. In the event that OPO encounters problems obtaining information or documents in a timely manner during the review of a complaint, the matter will be escalated. Delays in providing requested information or documents will be considered a denial of access and form part of the review's report.

Failure to Provide Documents

The fact that a document is not available to the public, or accessible via an Access to Information request, is not a valid reason for denying access to OPO. Documents related to the contract in question are requested by the Procurement Ombudsman through a provision of the Regulations (and not through the *Access to Information Act*). As such, federal organizations should not deny access to, or redact documents in accordance with, the provisions of the *Access to Information Act*. OPO's access to information and documents necessary to conduct the review in accordance with the Regulations is not limited by the *Access to Information Act* (AIA).

OPO is subject to the AIA and therefore would only publicly release documents provided by the contracting organization or the complainant in instances where an Access to Information Request were received and, in those instances, would only release documents in accordance with the AIA. This means that, subject to the *Access to Information Act*, confidential or sensitive information (for example, third party financial information) would not be released by OPO as it is required by the AIA to refuse to disclose such information. Moreover, in instances where OPO

is contemplating releasing documents, which were created by others (e.g. the contracting organization or the complainant), under the AIA, OPO would consult, as required by the AIA, with the originator(s) of the documents.

Finally, OPO staff are subject to Government of Canada security requirements and all documents will be handled in accordance with their designated security level.

COMPLAINT REVIEW PHASES

Reviews of complaints are carried out in the following phases:

- Review Initiation;
- Analysis and Report Writing; and
- Report Release.

4.1 Review Initiation

In instances where a complaint meets the requirements of the Regulations, launch letters are sent to the complainant and the contracting organization within 10 working days of the complaint being filed.

The letter to the contracting organization informs its deputy head that the complaint met the requirements of the Regulations and therefore the Procurement Ombudsman is required to launch a review of the complaint. The letter requests all information and documents associated with the contract in question, as well as all policies, standards, guidelines and procedures governing the organization's procurement that were in effect at the time, be provided to OPO within specified timelines.

The letter to the complainant notifies him or her that the complaint met OPO's regulated requirements and that the review process has been initiated. The letter also requests any additional documents, not submitted as part of the complaint, be provided to OPO.

4.2 Analysis and Report Writing

During the analysis phase, OPO will examine the issue(s) identified in the complaint and, as required by subsection 12(1) of the Regulations, take into consideration any relevant factors, including the following:

- whether the complainant would have had a reasonable prospect of being awarded the contract, were it not for the actions of the contracting organization;
- the seriousness of any deficiency in complying with the various regulations made under the *Financial Administration Act*;
- the failure or refusal of the complainant to provide information about its goods and services at the request of the contracting department;
- the degree to which the complainant was prejudiced;

- the degree to which the fairness, openness or transparency of the procurement process was prejudiced; and
- whether any of the parties acted in bad faith.

OPO will prepare a review of complaint report. The report will address each issue raised in the complaint, and comment on the factors listed in subsection 12(1) of the Regulations as appropriate. The report is issued by the Procurement Ombudsman.

4.3 Report Release

Once the review is complete, the Procurement Ombudsman provides his or her findings and any recommendations in a written report.

A copy of the report issued by the Ombudsman will be provided to the complainant, the minister of the contracting organization and the Minister of Public Services and Procurement, as required by the Regulations.

For reviews about the award of a contract, the Procurement Ombudsman may recommend compensation of up to 10 percent of the value of the contract awarded (not including the value of any options or extensions of the contract). The Ombudsman cannot recommend the cancellation of a contract. If observations not directly related to the issues raised in the complaint are noted during the analysis, the Procurement Ombudsman may choose to comment on them in the report or raise them separately with the deputy head of the contracting organization.

The results of the review will be summarized on OPO's website and reported in OPO's Annual Report.

ADDITIONAL REFERENCE MATERIALS

For more information, consult OPO's:

- Make a Complaint page at <http://opo-boa.gc.ca/plaintesurvol-complaintoverview-eng.html>
- Reviewing Supplier Complaints page at <http://opo-boa.gc.ca/enquetes-investigations-eng.html>
- Investigation Summaries page at <http://opo-boa.gc.ca/sommaireenq-investsum-eng.html>
- Mandate at <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-143/page-1.html#docCont>