

PROMOTING FAIRNESS, OPENNESS & TRANSPARENCY IN FEDERAL PROCUREMENT

2018-2023
Procurement Practice
Review Plan

Office of
the
Procurement
Ombudsman Promoting
Fairness, Openness
& Transparency in
Federal Procurement



Government
of Canada

Gouvernement
du Canada

Canada

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Foreword

The 2018-2023 Procurement Practice Review Plan describes the methodology and the process used to select the review projects the Office of the Procurement Ombudsman will undertake over the next five years. This Plan establishes the foundation on which my Office will add value – that is in terms of assessing procurement practices in federal organizations and making recommendations to strengthen the fairness, openness and transparency of those practices.

This multi-year plan is an important way to ensure my Office focuses its efforts and resources on the highest risk areas within the procurement process.

In establishing our procurement practice review priorities, the Office conducted environmental scans, literature review, data analyses, assessment of key risks to fairness, openness and transparency, and assurance mapping of all procurement-related audit and review work conducted in federal organizations.

The Office also examined other sources, including:

- Issues raised by the supplier and the federal procurement community;
- Issues identified by professional and industry associations; and
- Issues identified in federal organization internal and external audits.

I would like to thank the staff of the Procurement Inquiries and Review function in the development of this plan.

Alexander Jeglic
Procurement Ombudsman

Introduction

Purpose

This document presents the 2018-2023 Plan for Procurement Practice Reviews (PPR). This five-year Plan identifies and describes the reviews to be conducted by the Office of the Procurement Ombudsman (OPO). The planned practice reviews were selected based on a reasonable and reasoned assessment of the highest risk procurement areas. These reviews will assess the fairness, openness and transparency of federal procurement practices in departments and agencies.

Mandate

As established in paragraph 22.1 (3)(a) of the *Department of Public Works and Government Services Act*, the Procurement Ombudsman is mandated to review the practices of departments for acquiring materiel and services to assess their fairness, openness and transparency and make any appropriate recommendations to the relevant departments for the improvement of those practices.

The federal organizations subject to review by the Office of the Procurement Ombudsman (OPO) are listed in Schedules I, I.1, and II of the *Financial Administration Act* (FAA). These organizations and their related purchasing activity are presented in [Annex A](#). The Canadian Security Intelligence Service, the Senate and the House of Commons are excluded from the Procurement Ombudsman's mandate.

Government Context

The Government of Canada is the single largest buyer of goods and services in Canada. Government procurement is carried out pursuant to a legal framework that includes laws and regulations, agreements, policies, directives, procedures and guidelines. At the core are the *Government Contracting Regulations* created under the authority provided by the FAA, and the Treasury Board Contracting Policy. The Policy details the obligations of federal organizations for acquiring goods and services in a manner that enhances access, competition and fairness.

Federal organizations have a responsibility to maintain the confidence of the supplier community and the Canadian public when purchasing goods and services by conducting their procurements in a fair, open and transparent manner – a commitment codified in the *FAA*.

Based on the 2016 Purchasing Activity Report¹, the Government of Canada spent \$18.2 billion on buying goods, services and construction. Public Services and Procurement Canada (PSPC) –

¹ 2016 is the last year this report will be published. Since 2017, federal departments and agencies have been required to publish their contracting activities above \$10,000 and their aggregate data on contracting activities below \$10,000 on the Open Government Portal.

the federal government purchasing agent – recently reported that it now procures in excess of \$20 billion in goods and services on behalf of other federal organizations or 87% of all government procurement (in excess of \$23 billion).

Public procurement among countries who are members of the Organization for Economic Cooperation and Development (OECD) – of which Canada is a member – accounts for nearly 12% of GDP and 29% of all 2016 OECD members' government expenditures.² The value of Canada's public procurement was slightly higher at 13% of GDP.

Did You Know

Total federal procurement: **\$23 billion**

PSPC purchases on behalf of federal organizations: **\$20 billion (87%)**

PSPC purchases awarded to Canadian SMEs. For contracts under \$1 million, SME share value is 80% : **\$7 billion (35%)**

Average number of contracts PSPC signs every year: **60,000**

Number of suppliers who do business with PSPC: **7,500**

Government Priorities

Budget 2018 – *Equality + Growth: A Strong Middle Class* supports the Government's people-centered approach. This Budget focuses on the following key areas:

- Growth
- Progress
- Advancement
- Reconciliation

² 2016 OECD Survey.

Budget 2018 outlined the following procurement-related commitments and investments:

- **\$275 million over one year** to operate, maintain and repair assets in PSPC's real property portfolio
 - **\$196.8 million over five years** for PSPC to establish a new electronic procurement platform
 - **\$105 million over five years** to the regional development agencies to support investments in women-led businesses as part of the new Women Entrepreneurship Strategy
-
- Increase the participation rate in federal procurement of women-owned small and medium-sized enterprises (SMEs) to at least 15% from 10% to reflect the current share of SMEs majority led by women entrepreneurs in the broader population
 - Increase efforts to ensure diverse suppliers are provided with more opportunities to compete in the federal procurement process

These commitments and investments may result in more contracts to federal suppliers and a more diverse supplier base, which in turn, could lead to an increase in contacts to our Office. OPO will continue to monitor trends in government procurement spending and any potential risks for future planning exercises.

Planning Process

A risk-based exercise was undertaken to develop the 2018-2023 Procurement Practice Review Plan.

Risk is measured as a function of the likelihood and impact of an event occurring with the potential to impact the fairness, openness or transparency to the federal procurement process. In developing this multi-year plan, OPO identified those areas of highest risk through environmental scanning, data analysis, literature review, risk assessment and prioritization, to ensure maximum value and coverage.

OPO increased the period of its multi-year Plan from three to five years to coincide with the new Procurement Ombudsman's term-of-office. A refresh of the Plan will be undertaken in each of the remaining four years to validate the procurement universe and the continued relevance of the planned procurement practice reviews.

OPO collected data for each element of the procurement process to assess the likelihood of an event occurring that could impact fairness, openness or transparency in procurement. A listing of the procurement elements is provided in [Annex B](#).

Procurement Review Universe

The Treasury Board Contracting Policy Framework (policy, regulations, directives, policy notifications, contracting authority and delegation, etc.) and the procurement process continue to provide the most appropriate review universe for developing the PPR Plan. Specifically:

- the policy framework provides a common ground shared by those organizations listed in Schedules I, I.1, and II of the *FAA*, regardless of their mandates or activities; and
- the procurement process provides OPO the ability to assess fairness, openness and transparency of procurement practices in individual federal organizations and government-wide; and

New initiatives and tools are also considered as part of the procurement review universe as these could impact fairness, openness and transparency in procurement. The procurement review universe is presented in [Annex B](#).

Planning Objectives

The primary objective in developing this Procurement Practice Review Plan was to provide a reasonable basis for selecting topics for organization-specific and government-wide procurement practice reviews.

Review Coverage

There are 92 federal organizations under OPO's mandate. Of these, 20 organizations had a total annual purchasing activity of \$100 million or more. These large organizations represent 95% of the total dollar value and 90% of the total number of purchases. In an effort to maintain coverage of federal organizations, in 2018-2019, OPO will strive to undertake two PPRs in large organizations, increasing to four PPRs each subsequent year covered by this Plan.

The next 50 moderately-sized organizations each have a total annual purchasing activity between \$1 million and \$99 million. Every year, OPO will identify a cluster of organizations with a similar mandate or structure. Based on an assessment of the identified cluster, one to two of these moderately-sized organizations will be selected for a review of the organization's management control framework (MCF) for procurement.

The approach described above effectively establishes a five-year review cycle that will consider all organizations with a total annual purchasing activity in excess of \$1 million.

In terms of the remaining 22 small organizations with an annual purchasing less than \$1 million – which collectively represent less than 1% of total annual federal purchasing value and less than 1% of total annual federal purchasing volume – OPO will monitor contacts and complaints from suppliers and any other available information regarding these organizations to determine whether they should be included within the scope of a PPR.

The selection of the organizations for 2018-2019 PPRs is described in more detail in the planning approach and methodology presented below.

Planning Approach

The PPR Plan was developed and review projects were selected by conducting a reasonable and reasoned risk assessment of the procurement review universe. The approach is described below.

Literature review – To gain an understanding of the procurement review universe, OPO conducted a literature review of the following documents to inform the development of the PPR Plan:

- Office of the Comptroller General (OCG): Three-Year Risk-Based Internal Audit Plan (2017-18 to 2019-20);
- 2018-2019 Departmental Plans: in particular PSPC, SSC, DND (Planning Highlights and Risk Analysis);
- Most recent Government Purchasing Activity Report (2016);
- Findings from internal audit and evaluation reports related to procurement conducted by federal organizations, the OCG, and the Office of the Audit General (OAG);
- Planned internal audits and evaluations by federal organizations, and the OAG.

Continuous monitoring and intelligence gathering – As part of its environmental scanning activity, OPO monitors numerous procurement-related information sources on a quarterly basis, e.g. trends and developments in other jurisdictions, publications, associations, major initiatives, jurisprudence, etc. Refer to [Annex C](#) for current trends and initiatives. OPO captures and analyzes the data, interprets findings and produces quarterly reports for management and an annual report of OPO's activities.

Data analysis – OPO systematically analyzed various sources of data collected by the Office (i.e.: contacts and comments from suppliers, comments obtained during outreach activities and Share Your Thoughts, findings from reviews of complaints and results of alternative dispute resolution processes, and findings from internal audit/review reports conducted by federal organizations). The results of this analysis are presented in [Annex D](#).

Government-wide Map of Procurement Assurance Coverage – In 2015-16, OPO established a map of all procurement-related federal audits and reviews (completed and planned in federal organizations) since 2011. The findings from these audits and reviews provide valuable information in terms of identifying potential systemic issues.

The map also helps in identifying gaps in procurement assurance coverage, in selecting organizations for review and in minimizing duplication and overlap of work with other assurance providers. OPO updates this map every quarter.

Prioritization of the Procurement Review Universe – As a result of the activities described above, risks related to the procurement review elements began to emerge. In 2017-2018, the **five most common procurement review elements** raised by suppliers were:

1. Solicitation
2. Evaluation of bids
3. Evaluation and selection plans
4. Debriefing
5. Planning and strategy

Risk Assessment – Based on the activities described above, OPO's procurement specialists and review professionals evaluated the risks within each procurement element, determined the controls to mitigate these risks, and assessed the impact of the residual risk for each procurement element. The results of this assessment is presented in a heat risk map in [Annex E](#).

In previous years, OPO provided rotational coverage of the higher risk procurement review elements. Starting in 2018-2019, OPO will review the three highest risk procurement review elements – **solicitation, evaluation and selection plans; and evaluation of bids** – in large organizations in each year of the five-year plan. This approach will provide:

- a comprehensive review of the highest risk areas and allow a more in-depth analysis and understanding of the issues and root causes;
- a collection of good practices which OPO will share via our website and at Outreach events;
- meaningful input to the Procurement Ombudsman's end-of-term report.

In terms of reviewing procurement management control frameworks in moderately-sized organizations, OPO is developing a standardized questionnaire that will be completed by these organizations. OPO will assess the responses received and validate the strength of their controls.

The most recent year's environmental scanning data (2017-18) was compared with data from the previous three years. The results, presented in [Annex F](#), indicate some elements of the procurement process remain relatively unchanged, while other elements either increased or decreased in terms of their likelihood.

Follow-Up Reviews

To determine the impact of OPO's procurement practice reviews on federal practices, follow-up reviews are conducted two years after the release of a report. Follow-up reviews allow the Office to report on progress made by federal organizations in implementing the Procurement Ombudsman's recommendations. These follow-up reviews inform interested stakeholders of specific actions organizations have taken to improve procurement practices, thereby facilitating other federal organizations' ability to introduce similar improvements, where applicable.

In 2018-2019, OPO will assess progress made in implementing corrective actions in response to the observations and recommendations from the following PPRs:

1. Review of bid evaluation processes (November 2016)
2. Review of non-competitive contracting (December 2016)

Table 1 below presents the review priorities and review schedule for the 2018-2023 PPR Plan. The final 2018-2023 Procurement Practice Review Plan was approved by the Procurement Ombudsman.

Notwithstanding, the Procurement Ombudsman has the discretion to undertake additional reviews not included in this Plan should significant issues arise or to defer reviews if competing activities should arise. As a result, the topics and timing of the procurement practice reviews identified in this Plan are subject to modification. However, any procurement practice review already launched must be completed within one year after the commencement of said review as required under sub-section 6.(1) of the *Procurement Ombudsman Regulations*.

Table 1 – 2018-2023 Procurement Practice Review Plan

PPR Activities	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
2017-2018 Carry forward	<ul style="list-style-type: none"> Bid solicitation MCF - CAS 	N/A	N/A	N/A	N/A
Highest risk procurement review elements	Solicitation; Evaluation and Selection Plans; Evaluation of Bids				
	2 large organizations Fisheries & Oceans Canadian Food Inspection Agency	4 large organizations Environment & Climate Change Employment & Social Development 2 other organizations (TBD)	4 large organizations (TBD) ³	4 large organizations (TBD)	4 large organizations (TBD)
MCF – Scorecard	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Moderately sized organization 	<ul style="list-style-type: none"> Moderately sized organization 	<ul style="list-style-type: none"> Moderately sized organization
Follow-ups	<ul style="list-style-type: none"> Non-competitive contracting Bid evaluation processes 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Bid solicitation MCF – CAS 	<ul style="list-style-type: none"> Selected contracting processes in 2 large organizations MCF (CAS 2018-2019) 	<ul style="list-style-type: none"> Selected contracting processes in 4 large organizations MCF (2019-2020)
Significant emerging issues	TBD - As risks shift or the need arises.	TBD - As risks shift or the need arises.	TBD - As risks shift or the need arises.	TBD - As risks shift or the need arises.	TBD - A risks shift or the need arises.
Ongoing monitoring & intelligence gathering	Monthly environmental scanning				
Studies/Analysis	To Be Determined Each Fiscal Year				

³ OPO reserves the right to focus these practice reviews on specific tools, goods or services based on an analysis of systemic issues that may arise.

Annex A – 2016 Purchasing Activity

Organizational Detail

Large Procuring Organizations Within OPO's Mandate (greater than \$100 million)	Total Value (in thousands)	Total Volume
National Defence	\$7,488,910	77,003
Public Services and Procurement Canada	\$3,836,835	24,350
Shared Services Canada	\$1,085,636	2,344
Fisheries and Oceans Canada	\$696,979	18,307
Parks Canada	\$551,739	13,895
Correctional Service Canada	\$486,654	84,356
Royal Canadian Mounted Police	\$472,856	8,040
Global Affairs Canada	\$422,755	14,339
Health Canada	\$284,202	9,205
Canada Border Services Agency	\$244,933	1,723
Treasury Board of Canada Secretariat	\$223,013	294
Environment and Climate Change Canada	\$220,021	5,051
National Research Council Canada	\$216,209	14,898
Employment and Social Development Canada	\$215,617	1,544
Canadian Food Inspection Agency	\$160,632	6,371
Agriculture and Agri-Food Canada	\$155,325	17,798
Canada Revenue Agency	\$154,368	1,355
Canadian Space Agency	\$149,122	566
Immigration, Refugees and Citizenship Canada	\$146,950	4,629
Natural Resources Canada	\$116,876	4,081
Sub-total for Large Procuring Organizations	\$17,329,632	310,149
Percentage of the Total	95%	90%

Moderately-sized Procuring Organizations Within OPO's Mandate (greater than \$1 million; less than \$100 million)	Total Value (in thousands)	Total Volume
Transport Canada	\$98,947	3,883
Innovation, Science and Economic Development Canada	\$93,507	4,014
Public Health Agency of Canada	\$68,408	2,191
Office of the Chief Electoral Officer	\$66,380	481
Indigenous and Northern Affairs Canada	\$64,374	806
Veterans Affairs Canada	\$51,184	1,726
Department of Justice Canada	\$39,069	2,557
Statistics Canada	\$34,994	1,189
Canadian Heritage	\$29,325	1,639
Public Prosecution Service of Canada	\$28,285	388
National Energy Board	\$27,220	371
Immigration and Refugee Board of Canada	\$21,496	1,362
Office of the Superintendent of Financial Institutions Canada	\$17,612	538
Public Safety Canada	\$16,708	607
Library and Archives Canada	\$15,707	280
Canadian Nuclear Safety Commission	\$14,414	335
Infrastructure Canada	\$14,035	79
Public Service Commission of Canada	\$12,236	761
Courts Administration Service	\$12,253	1,202
Canadian Institutes of Health Research	\$11,661	375
Natural Science and Engineering Research Council	\$11,258	326
Office of the Auditor General of Canada	\$10,922	600
Canada School of Public Service	\$10,785	190
Canadian Radio-television and Telecommunications Commission	\$10,731	329
Privy Council Office	\$7,793	63
Department of Finance Canada	\$6,658	290
Administrative Tribunals Support Service of Canada	\$6,656	278
Financial Transactions and Reports Analysis Centre of Canada	\$5,108	186
Office of the Privacy Commissioner of Canada	\$4,580	267
Office of the Commissioner for Federal Judicial Affairs Canada	\$4,522	339
Canadian Grain Commission	\$4,418	823
Canadian Transportation Agency	\$4,388	123
Office of the Information Commissioner of Canada	\$4,284	171
Canada Economic Development for Quebec Regions	\$4,184	821
Atlantic Canada Opportunities Agency	\$4,155	808
Office of the Governor General's Secretary	\$4,058	233
Registrar of the Supreme Court of Canada	\$3,932	358

Moderately-sized Procuring Organizations Within OPO's Mandate	Total Value (in thousands)	Total Volume
Canadian Human Rights Commission	\$3,773	354
Office of the Commissioner of Official Languages	\$3,426	169
Financial Consumer Agency of Canada	\$3,032	160
Western Economic Diversification Canada	\$2,850	219
Patented Medicine Prices Review Board	\$2,200	170
Canadian Environmental Assessment Agency	\$2,187	102
Civilian Review and Complaints Commission for the RCMP	\$1,774	153
Canadian Transportation Accident Investigation and Safety Board	\$1,669	132
Office of the Commissioner of Lobbying of Canada	\$1,628	44
Parole Board of Canada	\$1,540	271
Social Sciences and Humanities Research Council	\$1,328	72
Federal Economic Development Agency for Southern Ontario	\$1,159	124
Status of Women Canada	\$1,015	189
Sub-total for Moderately-sized Procuring Organizations	\$874,079	33,032
Percentage of the Total	5%	10%
Small Procuring Organizations within OPO's Mandate (less than \$1 million)	Total Value (in thousands)	Total Volume
Military Police Complaints Commission of Canada	\$840	52
Office of the Public Sector Integrity Commissioner	\$801	64
National Film Board	\$710	16
Military Grievances External Review Committee	\$450	37
Veterans Review and Appeal Board	\$281	57
Correctional Investigator Canada	\$210	14
National Battlefields Commission	\$99	3
National Farm Products Council of Canada	\$96	28
Copyright Board Canada	\$40	0
RCMP External Review Committee	\$20	4
Canadian Centre for Occupational Health and Safety	\$15	3
Canadian Intergovernmental Conference Secretariat	\$2	1
Sub-total for Small-sized Procuring Organizations	\$3,566	280
Grand Total	\$18,207,277	343,461

Note: The following federal organizations are included in OPO's mandate. However, contract information for the following organizations did not appear in the 2016 PAR: Secretariat of the National Security and Intelligence Committee of Parliamentarians; Canadian Northern Economic Development; Investment in Canada Hub; Northern Pipeline Agency; Canadian High Arctic Research Station; Communications Security Establishment; Office of Communications Security Establishment Commissioner; Canada Emission Reduction Incentive Agency; Canada Employment Insurance Commission; Law Commission of Canada.

Annex B – Procurement Review Universe

OPO has determined that The Treasury Board Contracting Policy Framework (policy, guidelines, policy notices, Treasury Board Circulars, contracting authority and delegation, etc.) and the procurement review elements as presented below continue to provide the most appropriate review universe for developing the Procurement Practices Review Plan.

Procurement Review Framework

- *Financial Administration Act; Government Contracts Regulations*
- Trade Agreements (NAFTA, AIT/CFTA, CETA)
- TB Contracting Policy Suite (policy, authorities, guidelines, notices)
- PSPC: Supply Manual
- PSPC: Vendor Performance Management Framework; Procurement Risk Assessment Tool
- PSPC: Code of Conduct for Procurement; Integrity Regime
- Values and Ethics Code for the Public Service
- Oversight Mechanisms (e.g. Contract Review Committees; Fairness Monitoring Program)
- Procurement Vehicles
- Transformation Initiatives
- Federal Organizations' Guidance (policies and manuals)

Procurement Review Elements

- **Pre-Contractual Phase** – Planning & strategy; statement of work; bid evaluation & selection plans.
- **Contracting Phase** – Solicitation; evaluation of bids & selection method; debriefing.
- **Contract Administration** – Contract execution & performance; contract amendments; payment.

Departments and Agencies under OPO's Mandate

- Schedules I, I.1, and II of the *Financial Administration Act*

Annex C – Current Trends and Initiatives

OPO analyzed and considered the current procurement environment and relevant government-wide trends and initiatives in identifying emerging issues and topics for procurement practice reviews. These are presented below.

Current Trends

In his mandate letter, the Prime Minister assigned the Minister of Public Services and Procurement the responsibility to “modernize procurement practices so that they are **simpler**, less administratively burdensome, deploy **modern comptrollership**, and include practices that support our economic policy goals, including green and **social procurement**.”

In June 2018, the House of Commons Standing Committee on Government Operations and Estimates released a study report on federal government procurement entitled *Modernizing Federal Procurement for Small and Medium Enterprises, Women-Owned and Indigenous Businesses*. This study examined the federal procurement process and outlined the key challenges of the current procurement process including the principal barriers preventing SMEs, women-owned and Indigenous businesses from competing for federal contracts.

The Committee made 40 recommendations to address the study's key challenges, such as:

- **simplifying** the current procurement process;
- modernizing the Government of Canada's policies and procedures for contracting, including **streamlining** requirements and updating terms and conditions, taking into account the findings of the Office of the Procurement Ombudsman;
- ensuring that the **right procurement approach** is used for each procurement;
- implementing strategies to encourage and promote procurement officials and suppliers to place greater emphasis on best value for Canadians, by including value-propositions that give greater weight to qualifications and quality rather than primarily focusing on price;
- establishing targets related to the federal procurement contracts that the federal government awards to SMEs; and,
- improving data collection to track and evaluate the impact of the Procurement Strategy for Aboriginal Business on Indigenous business activities in order to provide greater accountability.

The OCG continues to assess contracting and procurement as one of its highest risks impacting the ability of departments to effectively and efficiently deliver on their mandates. The OCG identified the following risks: insufficient experience, skills and knowledge (**capacity**); non-compliance with applicable policy instruments; inadequate internal controls; and ineffective or inefficient use of procurement vehicles.

The 2016 Annual Report on the State of Sustainable Public Procurement in Canada commissioned by the Municipal Collaboration for Sustainable Procurement highlights best practices based on lessons shared by municipalities and educational institutions from across Canada. The report identified ten key sustainable purchasing trends, including **procurement transformation, social procurement, training and change management**. These trends resonate with the federal purchasing environment.

Payment on Due Date – The Financial Management Policy was updated April 1, 2017 to allow payments to suppliers to drop below the 30 day period. Some terms and conditions related to payment in PSPC contracts may include a different method of payment which may not reflect the spirit of the Policy and may not uphold the principle of fairness. Delayed payment for SMEs can cause significant cash-flow problems.

The Australian Small Business and Family Enterprise Ombudsman observed that small businesses were being crippled by slow payments and the national economy was suffering as a result. As a result of the Australian Supplier Payment Code which calls for payment within 30 days after receipt of a correct invoice, late payment performance is beginning to improve. Nonetheless, the Ombudsman is pushing for 15-day payment terms.

In a similar vein, Ontario introduced prompt-payment legislation in December 2017 for construction projects, which is also becoming law in Manitoba. The federal government has announced it will introduce legislation for public projects in the near future. While this specifically relates to construction projects, OPO will monitor the situation to see if this will be applied to goods and services as it would alleviate some of the concerns expressed by SMEs. Prompt-payment legislation is well established around the globe.

Current Initiatives

Procurement Modernization

The following are some of the procurement-related initiatives currently underway.

Electronic Procurement Solution (EPS) – This is a centralized and streamlined paperless procurement process, changing the way government and suppliers buy and sell approximately \$23 billion in goods and services. Budget 2018 allocated \$196.8 million over five years to establish an e-platform for simpler and better procurement. PSPC awarded a contract valued at \$80.3 million to implement and manage an electronic procurement solution which will include: end-to-end electronic procurement; a new Government Electronic Tendering Service (GETS); a service desk; and common business processes and products scalable across government. PSPC stated it apply lessons learned from other major IT projects to ensure the success of this major government-wide system.

Contract Simplification – This initiative should simplify contracts and solicitation documents; ensure consistency; improve terms and conditions to today's business and operating context;

benchmark other jurisdictions against Canada's current contracting practices to identify areas of improvement; and develop an e-clause repository of standard clauses. It will also align Canada's procurement practices with commercial best practices in contract development.

Acquisition Cards – PSPC and TBS are collaborating to standardize and simplify the process and to increase the use of acquisition cards for low dollar value purchases. In this regard, PSPC is amending existing SOs/SAs to increase the use of acquisitions cards when buying and paying for goods and services. The ultimate goal is to reduce the administrative burden on federal organizations and suppliers which could help alleviate the issue related to late payments, a particularly worrisome issue for SMEs.

Standing Offers (SOs) and Supply Arrangements (SAs) – PSPC is simplifying standing offers. The proposed business change means suppliers will no longer be ranked and a competitive winner named; end user selection will be based on **Right-fit** from the qualified suppliers; **Right-fit** selection refers to best value for end-users, not lowest price.

New SOs/SAs are being re-procured as part of the transformation initiative. These include: graphic design services; temporary help services; office furniture to align with the new government workplace 2.0 environment; scientific and medical requirements. PSPC is also developing a Procurement Guide on Standing Offer/Supply Arrangement (SO/SA) business changes.

Phased-Bid Compliance – This process came into effect July 2017 (for use by PSPC for procurements of \$2 million or more). It provides an opportunity, after bid closing, for bidders to correct a finding of non-compliance for the following mandatory requirements: financial information and eligibility criteria. This new initiative was recently applied as part of the procurement for the shipbuilding program.

Canadian Collaborative Procurement – This initiative will allow provinces and territories to use federal government SOs. This Initiative will be extended to SAs at a later date. As part of the pilot, ten provinces and territories have signed on to purchase 14 different commodities with a planned expansion to 148 commodities over the next three years (2018-2021). With a broader client base, PSPC believes it will be able to negotiate better prices or volume discounts.

Defence Procurement Streamlining – On June 1st, 2015, the Minister of Public Services and Procurement authorized the Minister of National Defence to acquire defence supplies, up to \$5M for electronic and competitive processes and \$250K for non-competitive processes. This increased authority is being implemented in a phased approach.

The aim of this increased authority is to achieve efficiencies by empowering the Department of National Defence (DND) to manage lower dollar value procurements, while enabling PSPC to focus on more strategic, complex and higher dollar value procurements. If DND's increased contracting authority is not properly managed, this could pose a risk to fairness, openness and transparency.

DND introduced reforms to streamline its procurement process such as reducing departmental approval times by 50%; increasing its contracting authority to allow 80% of procurement contracts to be managed departmentally; aligning innovation in the Canadian defence industry to meet defence procurement needs; and strengthen the defence procurement workforce with enhanced training and professional accreditation.

Contract Security – This program contributes to Canada’s economic and national security agenda by processing over 120,000 security screening requests for private sector organizations and individuals to enable contractors to participate in sensitive Government contracts or foreign government contracts. PSPC is implementing the following key initiatives:

- Reduce administrative burden on industry through innovations such as a streamlined registration process, electronic signature, and developing an e-learning platform to better guide clients through the contract security process.
- Align security screening processes with the new requirements of the TBS Standard on Security Screening to increase security rigor and the Contract Security Program.

Vendor Performance Management Framework – The objective of the initiative is to develop “better vendor management tools to ensure the Government is able to hold contractors accountable for poor performance or unacceptable behavior.”

The United States, Australia and the United Kingdom have implemented vendor performance programs or frameworks. The Canadian framework is being modeled after the American approach and augmented by best practices from other jurisdictions.

PSPC will phase-in the implementation of the framework, which will feature a central repository and will assess vendor performance at each stage of the procurement life cycle; that is: bid solicitation; bid evaluation; contract management; and contract close-out.

Build in Canada Innovation Program – Growth over the past 24 months has resulted in over 90 contracts being awarded. This five-year program is valued at \$40 million/year (\$200 million).

The Integrity Regime

The Integrity Regime came into effect July 2015 to ensure federal organizations conduct business with ethical suppliers in Canada and abroad.

Budget 2018 included enhancements to the Integrity Regime and introduced legislative amendments to create a deferred prosecution agreement regime to be known as the Remediation Agreement Regime. The enhancements include greater flexibility in debarment decisions; increase the number of triggers that can lead to debarment; explore alternative measures to further mitigate risks; and expand the scope of business ethics covered under the

regime. This enhanced Integrity Regime will be implemented through an Ineligibility and Suspension Policy expected to take effect January 1, 2019.

Legislation

The *Government Contracts Regulations* are being amended to modernize comptrollership in government procurement, consolidate all policies related to assets and acquired services into an overarching policy for the management of assets. The amendment, currently with Justice Canada, seeks to increase the sole source limit from \$25k to \$40K. The Government aims to publish the amendment in the fall of 2018 with a coming into force in January 2019.

Trade Agreements

Agreement on Internal Trade (AIT) – The federal government, provinces and territories recently renegotiated the AIT. These renegotiations resulted in the **Canada Free Trade Agreement (CFTA)** which came into effect on July 1st 2017. As OPO's Regulations were developed around the AIT provisions and updated to reference the CFTA, the Office does not anticipate that the move from the AIT to the CFTA will have a significant impact on OPO's operations.

North American Free Trade Agreement (NAFTA) – New thresholds took effect on January 1, 2018 up to December 31, 2019. The threshold for goods increased to \$32,900 including taxes. The threshold for services was increased to \$106,000 including taxes, up from \$89,600. The threshold is being used to delimit the separation between the ProServices Supply Arrangement (SA), and the Task-based Informatics Professional Services (TBIPS) and the Task and Solutions Professional Services (TSPS) SAs.

United States Mexico Canada Agreement (USMCA) – Negotiations for this agreement were concluded on September 30, 2018. This agreement replaces NAFTA. OPO will monitor information closely for any changes to the thresholds for goods and services.

Canadian Free Trade Agreement (CFTA); Canada-European Comprehensive and Economic Trade Agreement (CETA) – The thresholds were adjusted for the period January 01, 2018 to December 31, 2019. Levels under the CFTA rose to \$25,300 for goods and \$101,100 for services. Under CETA, levels rose to \$237,700 for goods and services. The levels under CFTA and CETA are inclusive of taxes.

Capacity

Resource scarcity continues to plague procurement and supply management teams. The demographics for the Purchasing and Supply (PG) Group as of April 2016 are as follows:

- Average age is 45 years

- 40% of the population is over 50 years of age
- 32% of the procurement community is eligible to retire within the next five years as compared to 26.2% for the core public service overall.

As previously noted by the OCG and Canadian municipalities and educational institutions, there is an ongoing risk that federal organizations may not have sufficient capacity, knowledge and/or experience to implement transformative changes (such as E-Purchasing Solution) while meeting procurement needs. This may increase the number of contacts and complaints OPO receives related to ongoing federal government procurement.

Although DND is committed to growing and professionalizing the defence procurement workforce, the Department may face challenges in purchasing billions of dollars in military procurement over the coming years owing to the shortage of procurement staff.

Actions

12 federal organizations are co-funding four ongoing national staffing campaigns. 16 federal organizations are making their staffing pools accessible to other federal organizations. These staffing actions will help to standardize procurement responsibilities and competencies.

PSPC created an interdepartmental training and capacity building working group with an aim to establish talent management programs, professionalize the procurement function, invest in employee retention efforts, and centralize training across the federal government to address lack of training in regions, including the consolidation of training resources through a Procurement University.

Information Technology (IT) Procurement

Shared Services Canada (SSC) is responsible for the consolidation of government-wide procurement of software and hardware for workplace technology devices. All resulting SSC contracts and supply arrangements are to be used by federal organizations.

In a recent decision, the Canadian International Trade Tribunal (CITT) found SSC had wrongly and arbitrarily invoked a national security exception (NSE) on a \$430 million contract for a new weather-predicting supercomputer for Environment Canada. SSC has filed an application for judicial review at the Federal Court of Appeal, to prevent the CITT from hearing disputes involving large procurements covered by NSEs. The Government has argued that the CITT had no jurisdiction to hear a complaint on contracts covered by the 2012 omnibus NSE. The outcome of this case could affect billions of dollars in federal procurements.

The CITT also ruled on a similar complaint involving Hewlett-Packard articulating a significant concern about the use of the NSEs.

"SSC in effect treats the NSEs as a general licence to avoid potential suppliers' right to seek review of government actions at the tribunal."

Serge Frechette, CITT member

"Given the CITT's decision marked a significant departure from previous jurisprudence, SSC has sought a judicial review in order to obtain clarity on the law."

Michael Morris, Senior General Counsel
Government of Canada

More recently, SSC proposed an SO for printer services. Smaller suppliers are concerned they will be eliminated from the competition for federal printer purchases, given that the Workplace Technology Devices Printer Procurement could limit suppliers to 2-3 large corporations impacting hundreds of small businesses which rely on subcontracts for printer sales and maintenance.

The Australian government recently announced a radical reform to force its federal agencies to end their dependence on big IT suppliers while opening up new markets to smaller tech firms. This will give Australian SMEs an opportunity to bid for government IT contracts up to \$100 million or contracts with a three-year duration.

IT Tools – As part of its 2017-18 to 2019-20 risk-based planning exercise, the OCG identified information technology (IT) management as one of its top risks. The Government relies more and more on IT to provide opportunities for innovation, efficiency and effectiveness, and increased openness and accessibility. However, greater reliance on IT also means increased threats to security, data and privacy, and can result in significant implementation issues, weakened system controls, and significant cost overruns if not properly managed.

Conclusion

New and emerging risks could emerge as a result of significant structural or behavioral changes from these transformation initiatives and change management processes, if not properly managed. OPO will closely monitor the implementation of these initiatives to assess their potential impact on federal organizations and suppliers, and on the fairness, openness and transparency of federal procurement.

Annex D – Analysis of 2017-2018 Data

Procurement Phases	Procurement Process Elements	Intake		ROCs		ADRs Formal & Informal		Outreach		Other Assurance Providers		Totals	
		Number of Issues	Percentage	Number of Assessments	Percentage	Number of Issues	Percentage	Number of Issues	Percentage	Number of Findings	Percentage	Number of Issues	Percentage
Pre-Contractual	1. Planning & strategy	43	12%	0	0%	0	0%	11	15%	4	25%	58	12%
	2. Statement of work	33	9%	3	20%	0	0%	11	15%		0%	47	10%
	3. Bid evaluation & selection plans	58	16%	6	40%	0	0%	7	9%	1	6%	72	15%
	Sub-totals	134	37%	9	60%	0	0%	29	39%	5	31%	177	37%
Contracting	4. Solicitation	67	19%	0	0%	0	0%	19	26%	0	0%	86	18%
	5. Evaluation of bids	61	17%	3	20%	0	0%	7	9%	1	6%	72	15%
	6. Debriefings	43	12%	3	20%	1	12%	4	5%		0%	51	11%
	Sub-totals	171	48%	6	40%	1	12%	30	40%	1	6%	209	44%
Contract Admin	7. Payment	22	6%	0	0%	5	55%	7	9%	1	6%	35	7%
	8. Contract amendments	12	3%	0	0%	0	0%	1	2%	4	25%	17	4%
	9. Contract execution	20	6%	0	0%	3	33%	8	10%	5	31%	36	8%
	Sub-totals	54	15%	0	0%	8	88%	16	21%	10	62%	88	19%
	Totals	359	100%	15	100%	4	100%	75	100%	16	100%	474	100%

Annex E – Risk Analysis

Based on the results presented in Annex D, OPO's procurement specialists and review professionals analyzed the risks for each procurement element, determined the controls to mitigate these risks, and assessed the impact of the residual risk for each procurement element. As a result of this exercise, the risk analysis for each procurement element is the following, ranked from highest risk to lowest risk:

1. **Evaluation of bids:** Ranked very high in impact and very high in likelihood with over 15 percent chance of occurring.
2. **Solicitation:** Ranked high in impact and very high in likelihood with over 15 percent chance of occurring.
3. **Bid evaluation and selection plans:** Ranked high in impact and high in likelihood with over 10 to 15 percent chance of occurring.
4. **Planning and strategy:** Ranked moderate in impact and high in likelihood with over 10 to 15 percent chance of occurring.
5. **The following three procurement elements:**
 - a. **Contract amendments:** Ranked high in impact and low in likelihood with a 0 to 5 percent chance of occurring.
 - b. **Debriefings:** Ranked moderate in impact and moderate in likelihood with over 5 to 10 percent chance of occurring.
 - c. **Contract execution:** Ranked moderate in impact and moderate in likelihood with over 5 to 10 percent chance of occurring.
6. **The following two procurement elements:**
 - a. **Statement of work:** Ranked moderate in impact and low in likelihood with a 0 to 5 percent chance of occurring.
 - b. **Payment:** Ranked low in impact and moderate in likelihood with over 5 to 10 percent chance of occurring.

Annex F – Four-Year Data Comparison

Procurement Phases	Procurement Process	2014-15		2015-16		2016-17		2017-18	
		Number of Issues Identified	Corresponding Percentage						
Pre-Contractual	Planning and strategy	76	24%	62	13%	128	23%	58	12%
	Statement of work	13	4%	53	11%	28	5%	47	10%
	Bid evaluation and selection plans	62	20%	110	24%	88	15%	72	15%
	Sub-totals	151	48%	225	48%	244	43%	177	37%
Contracting	Solicitation	37	12%	83	18%	95	16%	86	18%
	Bid evaluation and selection	59	19%	58	12%	55	10%	72	15%
	Debriefings	17	5%	22	4%	46	8%	51	11%
	Sub-totals	113	36%	163	34%	196	34%	209	44%
Contract Administration	Payment	19	6%	31	7%	6	1%	35	7%
	Contract amendments	12	4%	13	3%	17	3%	17	4%
	Contract execution	20	6%	40	8%	108	19%	36	8%
	Sub-totals	51	16%	84	18%	131	23%	88	19%
	Totals	315	100%	472	100%	571	100%	474	100%