



# OFFICE OF THE PROCUREMENT OMBUDSMAN



## CHAPTER 6

### PROCUREMENT PRACTICES REVIEW

#### *STUDY ON*

#### *A MANAGEMENT APPROACH TO VENDOR PERFORMANCE*

OTTAWA  
MAY 2010

STRENGTHENING THE CONFIDENCE OF CANADIANS IN PUBLIC PROCUREMENT

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## Executive Summary

6.1 In this study, the Office of the Procurement Ombudsman (OPO) examined how organizations approach vendor performance and identified best practices for sharing to assist organizations in implementing a vendor performance program.

6.2 More specifically, we studied how these organizations monitor, evaluate, apply corrective measures (if necessary) and report on whether performance objectives were met.

6.3 This subject is of interest to our stakeholders due to the significant amount of money that is spent by the federal government on procuring goods, services and construction to deliver programs to taxpayers.

6.4 Due to the volume of business that vendors do with the federal government, issues with regard to performance are bound to arise. When the government and a vendor enter into a commercial contract, both parties have legal obligations to meet its terms and conditions. Holding vendors accountable for their performance is an important tool for making sure the government receives good value from its contracts. This also fosters better communication and results in improved relationships between the government and its vendors.

6.5 Eight Canadian government organizations responsible for the procurement of goods, services and construction at the federal, provincial, and municipal levels participated in the Study. It is important to note that five of these organizations, which are not covered by our mandate, contributed on a voluntary basis.

6.6 We carried out research that included a review of academic and government literature related to vendor performance. We also interviewed officials responsible for procurement, contract management and project management at participating organizations.

6.7 We found that vendor performance management is best supported by a vendor performance program with an established framework and policy. The elements of the framework need to be aligned with corporate strategic goals and objectives, as well as risk mitigation strategies.

6.8 All organizations we interviewed have best practices that address elements of a framework for a vendor performance program. For example, they have established processes; use performance clauses in contracts; use tools and automated systems to monitor, evaluate and report performance results; follow contract file close out procedures; and can apply corrective measures on vendors for poor performance.

6.9 A good vendor performance program helps to protect Crown interests and provides transparency on what the government's expectations are. Vendors are also entitled to know the rules of engagement. If government organizations apply corrective measures by clearly communicating, in advance, evaluation criteria coupled with due process, it is more likely to be defensible in a legal action.

6.10 In addition to vendor performance being monitored on a day-to-day basis for operational needs, senior procurement review committees will greatly benefit by having vendor performance information available to assist in the mitigation of risks when making procurement strategy and contract award decisions as noted in our 2008-2009 review of the Procurement Challenge and Oversight Function. This will minimize the risk of contracting with repeat poor performers.

6.11 The *Federal Acquisition Regulation* governing U.S. Government procurement requires agencies to consider past vendor performance information as an evaluation factor in future contracts. Although the U.S. has a number of best practices in this regard, there are also several challenges that hinder capturing adequate performance information for government-wide sharing. As a result, the President has announced new legal requirements to strengthen the use of vendor performance information.

6.12 The key piece in any framework is a comprehensive policy. Public Works and Government Services Canada (PWGSC) – Acquisitions Branch has had a vendor performance policy in place since 1996. However, roles and responsibilities are perceived to be unclear and there are concerns about legal consequences. This contributes to corrective measures for non-performance being infrequently applied.

6.13 In 2007, an Independent Advisor to the Minister of PWGSC issued a Report on Public Opinion Research Practices of the Government of Canada. The Independent Advisor expressed concerns about the effectiveness of the government's vendor performance policy and made a number of recommendations with regard to the evaluation of vendor performance and client satisfaction. In response, PWGSC committed to updating its Vendor Performance Policy and including a performance evaluation process.

6.14 Since many years, PWGSC – Acquisitions Branch has been revisiting its policy on vendor performance. PWGSC has advised us that the outstanding policy work and related consultations with stakeholders will be completed by March 31, 2011. This is an opportunity for PWGSC to consider the best practices and lessons learned of other organizations to develop a comprehensive and well reasoned approach to vendor performance that can serve as a model for others and contribute to improving the fairness, openness and transparency of the procurement process.

## Introduction

### Purpose

6.15 The purpose of this study was to identify how government organizations approach vendor (also referred to as supplier or contractor) performance and to identify best practices that contribute to the improving fairness, openness and transparency of the procurement process.

### Description

6.16 Organizations oversee vendor performance through a set of activities comprised of monitoring, evaluating, applying corrective measures (if necessary) and reporting on whether performance objectives were met. Vendor performance is the action taken by a vendor to meet its contractual obligations in delivering goods or providing services, including construction.

### Background

6.17 Last year, the Office of the Procurement Ombudsman (OPO) undertook a review of procurement practices related to the Procurement Challenge and Oversight Function. In our report, we noted specific procurement issues that can benefit from further attention by senior review committees to assist in the mitigation of procurement risks. This included information on past vendor performance and discussions of past vendor performance during contract periods.

6.18 We recommended that “Committees should be provided with assurances that procurement solicitation documents and evaluation procedures will ensure that the terms of any restrictions or conditions imposed on a vendor as a result of poor performance are being complied with for all suppliers responding to the solicitation.”

### Policy Context

6.19 Most federal government procurement is performed in accordance with the *Government Contracts Regulations* and the Treasury Board (TB) Contracting Policy. The Policy states “The objective of government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.”

6.20 Although there is no formal TB policy on vendor performance, the Contracting Policy identifies departments and agencies as responsible “to ensure that adequate control frameworks for due diligence and effective stewardship of public funds are in place and working.”

6.21 The TB Contracting Policy further states the following in various sections:

- “Contracting authorities should manage and administer their contracts in a manner that ensures that they are successfully executed in accordance with the agreed terms of time, cost and performance.”
- “The management and administration of contracts involves many activities to ensure the fulfillment of a contract. This also covers those activities or events that can alter or disrupt the performance of a contract e.g., default of a contractor, disputes and contract amendments.

Whenever the satisfactory fulfillment of a contract is jeopardized, contracting authorities should take the necessary steps to serve and protect the interests of the Crown in meeting the terms of the contract, and then to protect (where appropriate) the interests of other parties involved in the contract.”

- “The key factor when disputes arise is the expeditious handling of the disagreement. This is particularly important because prolonged disputes can delay performance as defined in the contract and payment to the contractor.”
- “On completion of the contract, the contracting authority should evaluate the work performed by the consultant or professional.”

6.22 Public Works and Government Services Canada, as the government’s common service provider for procurement, states the following in its Supply Manual:

- “Contract management is the process of systematically and efficiently managing contract development, implementation, and administration for maximizing financial and operational performance and managing inherent risk. Contract management encompasses the life cycle of a contract and involves many stakeholders including, but not limited to the contracting officer, the client department and the supplier.

Contract administration is an important part of contract management, which includes those activities performed after a contract award, to ensure files are properly maintained and that the contractor meets the requirements of the contract.

Contract management is an essential element of the procurement process that protects the interests of Canada while ensuring that suppliers are being treated fairly.”

- “Whenever the satisfactory fulfillment of a contract is jeopardized, contracting officers should take the necessary steps to serve and protect the interests of Canada. Contract disputes should be dealt with fairly, and as promptly as possible. Contracting officers should keep procurement files complete and up to date, to provide a record of actions taken.”
- “Contracting officers should also keep themselves informed about such things as the proposed contractor's performance history, financial situation and practices, before recommending a contract award. It also means keeping up to date with a contractor during the performance of a contract.”

6.23 These policies highlight the importance of good contract management and the need to ensure the monitoring and evaluation of the performance of the vendor during and at the conclusion of the contract. It also provides the basis for establishing the rules for due process and the authority to apply corrective measures.

## Why It Matters

6.24 According to the 2008 TB Purchasing Activity Report, departments and agencies of the Government of Canada spent in excess of \$16B and awarded over 340,000 contracts to vendors for the provision of goods, services and construction needed to deliver programs to Canadians.

6.25 Due to the volume of business that vendors do with the government, issues with regard to performance are bound to arise. When the government and a vendor enter into a contract, both parties have legal obligations to meet its terms and conditions.

6.26 Taking a management approach to vendor performance holds vendors accountable for their contribution to satisfying operational requirements of the Government and helps achieve best value for the Canadian taxpayer. Measuring, monitoring, evaluating and reporting on vendor performance creates an atmosphere that fosters better communication and results in improved government-vendor relationships. A good vendor performance program helps to protect Crown interests and provides transparency on what the government's expectations are, what evaluation criteria will be used to assess vendor performance, and what the outcomes will be for both parties. If vendor performance information is adequately gathered, validated and shared, this can be used to inform future contract award decisions and prevent contracting with repeat poor performers.

6.27 The development of a vendor performance program requires the involvement of all stakeholders to define and carry out their respective roles and responsibilities. They must share lessons learned to continuously improve processes and tools and address issues that are preventing the program from being successful. The program must also adapt to changing financial and operational environments that affect the government and its vendors. Senior management needs to periodically assess its efficiency and effectiveness, revisit the purpose, and confirm alignment with corporate strategic vision and objectives.

## Approach

6.28 Our study included eight Canadian government organizations at the federal, provincial and municipal levels. They were selected, based on our preliminary research, as they each carry out vendor performance management activities. Even though some of these organizations were outside our mandate, and are not governed by the TB Contracting Policy, they agreed to participate (on a voluntary basis) and share with us their approach to managing vendor performance. Their participation greatly contributed to our office gaining a better understanding of this topic.

6.29 The organizations included in the study were the following:

- Public Works and Government Services Canada - Real Property Branch; and Acquisitions Branch – Real Property Contracting Directorate (Acquisitions Branch is a common service provider of procurement)
- Correctional Service of Canada - Prairie Region
- Canada Revenue Agency
- Defence Construction Canada
- National Capital Commission
- Government of Ontario - Ministry of Government Services
- Government of Newfoundland and Labrador - Department of Transportation and Works
- The Regional Municipality of York, Ontario – Supplies and Services

6.30 Documentary research included a review of academic and government literature relating to vendor performance management. We interviewed officials responsible for procurement, contract management and project management involved in vendor performance activities. Responses to questions and documented practices were then compiled and analysed to identify best practices.

6.31 We wanted to know:

- how objective-based mechanisms are built into contracts to mitigate the risk of poor or non-performance;
- if vendor performance incentives and measurements are used to reduce procurement risks;
- how contract performance is managed when there are three parties involved: the contracting officer, the client and the vendor;
- if the ongoing evaluation of vendor performance helps strengthen relationships with vendors; and
- if post contractual activities utilize vendor performance information. For example:
  - Are corrective measures implemented?
  - What kind of evaluations are conducted?
  - Do vendors have opportunity for rebuttal?
  - What is the link to inform future contract award decisions?

6.32 As this is a study, we did not review any contract files of participating organizations to validate the information provided during the interviews. In addition, this

study did not cover any aspect of vendor conduct prior to the award of a contract, e.g. bid rigging.

## Observations

### Supplier and Federal Public Service Perspectives

6.33 We reviewed the 2005 Parliamentary Secretary's Task Force Final Report on Federal Government-Wide Review of Procurement. There were a number of observations raised by suppliers and federal public servants that are relevant to this study, as follows:

- Suppliers suggest that the government find ways to use competition more effectively, coupling this with requests to: (1) recognize quality suppliers; and (2) make competing worth the cost to companies by having only qualified companies compete against each other.
- Many suppliers note that without useful supplier performance information, it is difficult for prime contractors to know which potential subcontractors may cause a bid to be disqualified.
- Suppliers also point to the lack of criteria by which poor or superior performance is evaluated, as well as the lack of a satisfactory dispute resolution mechanism.
- Public servants would like to see a move to more results-based procurement, using competencies and capacities as key supplier selection criteria, and relying less on detailed product or service specifications. Such change would reflect, be supported by, and require greater recognition by government of the specialized expertise involved in procurement.

6.34 In addition, the Task Force reviewed 89 procurement-related internal audits/reviews conducted at Public Works and Government Services Canada (PWGSC) and other government departments since 1996-1997. Identified problems, and consequent recommendations for improvement, covered a broad range of issues and included:

- responsibilities related to contract administration/contract management; and
- contractor performance issues.

### U.S. Government

6.35 Both, the Canadian and the U.S. government rely heavily on vendors (or contractors as referred to in the U.S.) to provide a range of goods and services and deliver on their programs.

6.36 However, unlike in Canada, the regulations governing procurement in the U.S. (the *Federal Acquisition Regulation* or "FAR") require agencies to consider past performance information as an evaluation factor in certain negotiated competitive

procurements along with other evaluation factors such as price, management capability, and technical excellence.

6.37 Even though Canada does not have the same legal obligations as the U.S. and our policies and practices may differ, we share the U.S. view that “holding contractors accountable for past performance is an important tool for making sure the Federal government receives good value from its contracts.”

6.38 To this effect, it is critical that a contractor’s prior history of performance be made available to organizations to better inform them when making contract award decisions. Such information will help prevent renewing or awarding contracts to contractors with poor performance records. This reflects the recommendation in our 2008-09 review of the Procurement Challenge and Oversight Function.

6.39 We reviewed the United States Government Accountability Office (GAO) audit report entitled “Federal Contractors – Better Performance Information Needed to Support Agency Contract Award Decisions” of April 2009, as well as the Office of Management and Budget report entitled “Best Practices for Collecting and Using Current and Past Performance Information” of May 2000.

6.40 We learned the following:

- “Contracting officials who viewed past performance as an important evaluation factor noted that basing contract award decisions, in part, on past performance encourages companies to achieve better acquisition outcomes over the long term.”
- “Contracting officials agreed that for past performance information to be useful for sharing, it must be documented, relevant, and reliable.”

6.41 We also found the following best practices:

- Working with contractors as “they want frank discussions early in the process so they have an opportunity to improve performance.”
- Communication is critical as it “can greatly improve the quality of deliverables under Government contracts. The better the contractor performance evaluation, the more competitive the contractor will be for future work.”
- Recording current contract performance information and making it “readily available for use on source selections anywhere in the Government.”
- Using past performance as a source selection factor “helps ensure that the Government will contract with firms likely to meet performance expectations.”

6.42 However, GAO noted: “Several challenges hinder capturing adequate performance information for government-wide sharing.”

6.43 “First, agencies do not always assess and document contractor performance for contracts above a certain monetary threshold” and “only a small percentage of contracts had a documented performance assessment”.

6.44 “Second, other performance information that could be useful in making award decisions, such as contract terminations for default and management of subcontracts, was not systematically documented across agencies.”

6.45 “Third, some officials noted a lack of priority on documenting performance assessments and a lack of available system tools and metrics that managers needed to oversee the timely documenting of past performance evaluations.”

6.46 “Fourth, a lack of standardized evaluation factors and rating scales in the systems used to collect past performance information did not allow for aggregate level measures of how contractors were performing limiting the usefulness of the system.”

6.47 “Finally, a lack of central oversight and management of PPIRS [Past Performance Information Retrieval System] has hindered efforts to address shortcomings with the past performance systems.”

6.48 The practice of using contractor performance information is so crucial in the U.S. that in July 2009, the President issued a memorandum on “Improving the Use of Contractor Performance Information” to chief acquisition officers and senior procurement executives of the U.S. Government. “This memorandum (1) describes new requirements that will be introduced in the FAR to strengthen the use of contractor performance information, (2) outlines associated management responsibility that procurement executives must take to support robust implementation of these practices, and (3) establishes the review process that the Office of the Federal Procurement Policy will use to further improve contractor performance information.”

### **A Framework for Managing Vendor Performance**

6.49 Our literature review showed the importance of having a framework in place for the successful implementation of a vendor performance program. Several elements that could be included as part of a corporate vendor performance framework are:

1. A vendor performance policy
2. Processes and procedures
3. Automated systems
4. Reporting and feedback mechanisms

6.50 At the strategic level, the framework allows an organization to align its vendor performance program with corporate objectives and risk management strategies. It focuses on what is important and why it is important. The framework assists the organization to operate in a cohesive manner, providing corporate-wide information for decision making.

6.51 The success of the framework is based on how effectively the elements link to each other and is directly related to the support and commitment of senior management and stakeholders.

6.52 Most organizations interviewed stated that they have various elements of the framework to support their vendor performance program. Organizations that conduct their procurement based on a centralized model tended to have a more structured and organized vendor performance framework. Several best practices, which contribute to improving the fairness, openness and transparency of the procurement process, are identified below.

### Establishing Processes

6.53 All organizations stated that they rely on established processes to manage ongoing vendor performance. These processes are structured and defined according to the type of commodity, the operational requirements to be satisfied and the value, scope and complexity of the contract.

6.54 Defence Construction Canada (DCC) has implemented various processes specific to construction contracts. As an example, there is a process to be followed to complete the performance evaluation form. The Canada Revenue Agency (CRA) processes are tailored to individual contracts based on the type of commodity (goods or services) and the associated business and critical operations of their managers. For example, some of the telecommunications contracts at the CRA include processes to produce monthly service reports that track details showing how the vendor performed with respect to each of the services purchased.

6.55 The Real Property Branch (RPB) of PWGSC follows methodology as defined in the National Project Management System to ensure that all projects undertaken are planned, managed and delivered in a nationally consistent manner that is transparent regarding scope, schedule and budget, and is fully consistent with all applicable regulations and policies. This system includes vendor performance monitoring processes.

### Procurement Planning

6.56 Organizations stated that they identify vendor performance measures at the requirement definition stage of the procurement process and incorporate these into solicitations and resulting contracts. This is a good practice to support fairness and transparency and is critical for effective monitoring and evaluating of vendor performance during the life cycle of a contract. If this is done, it will assist in holding vendors accountable for performance and minimize the risk of legal challenges should the organization apply corrective measures.

6.57 The Government of Ontario is developing a process that will require the use of past vendor performance information and the results of client satisfaction surveys to

identify performance measurements for inclusion in future Vendor of Record solicitations.

### Use of Performance Indicators

6.58 A few organizations implemented the use of key performance indicators (KPIs) to measure vendor performance. A KPI is a key measure of performance for a specific activity that is pre-identified by the organization, and is used for determining the success of the vendor in meeting its contractual obligations. PWGSC – RPB uses these in its Alternative Forms of Delivery (AFD) contracts. The National Capital Commission (NCC) also uses KPIs in some of its contracts, e.g., when a vendor is to install a stage or set up fireworks, at a specific time, for Canada Day activities. In addition, CRA has implemented several contracts that make the use of IT performance indicators through service level agreements to evaluate vendor performance. A service level agreement defines the level of IT services a vendor will provide, e.g., fixing a computer within a certain number of hours.

### Use of Performance Clauses

6.59 Several organizations, for example DCC, the Government of Newfoundland and Labrador, and the NCC, include liquidated damages clauses in their contracts. Liquidated damages are clauses that are commonly used in construction contracts for payment to an organization when a vendor has not met a condition of the contract. PWGSC uses general conditions in most construction contracts that, in keeping with guidance in the Treasury Board Contracting Policy, include provisions for non-performance.

6.60 PWGSC also uses performance clauses in its AFD contracts that penalize the vendor for performing below the agreed-upon service level. All organizations use payment holdbacks, e.g., 10% of the contract value, in certain contracts to ensure compliance with all terms and conditions of the contract before a vendor is paid in full.

### Ongoing Monitoring

6.61 Several organizations have indicated that monitoring minimizes contract risks linked to time, quality, schedule and cost; delays in execution of the work and payment to the vendor; costly legal action to resolve disputes, and potentially having to re-compete the contract if it was terminated. The Correctional Service of Canada (CSC) - Prairie Region has dedicated staff to conduct ongoing monitoring activities to ensure that performance issues are raised and dealt with swiftly and effectively. PWGSC - RPB has a specialized group that provides ongoing monitoring for costs, risks, time, scope and claims.

### Use of Tools

6.62 All organizations use formal tools such as milestones, progress meetings and technical review meetings to manage performance issues as they occur. Many organizations also use various checklists, forms, templates, user guides and manuals. Tools such as these that support decision making contribute to improving the fairness and transparency of the procurement process.

6.63 For example, the Government of Ontario has a procurement toolkit that clearly defines and explains the processes to be followed in the execution of contracts, and includes specific tools to manage vendor performance.

6.64 PWGSC – Real Property Contracting Directorate (RPCD), which is part of Acquisitions Branch (AB), also has a number of tools available to procurement personnel for managing vendor performance, which are set out in AB's Supply Manual or Standard Acquisition Clauses and Conditions Manual. These tools include using performance bonds, letters of credit and performance-based contracts with incentives to surpass certain obligations; performing audits; suspending work; terminating contracts for default; enforcing remedies under the contract; and rejecting future bids on government procurement.

### Use of Automated Systems

6.65 Automated systems have embedded processes that allow for the standardization of practices and generation of performance reports. Several organizations stated that they have in place or are in the process of implementing automated systems to assist them in the monitoring, evaluation and reporting of vendor performance.

6.66 For example, DCC and the Government of Newfoundland and Labrador use their systems to maintain corporate history on vendor performance, including corrective measures that have been applied. The Government of Ontario uses customized software for contract management/knowledge management. Reports can be generated for management review. For the AFD contract managed by PWGSC - RPB, a specific system is in place to measure the performance of the vendor against KPIs. York Region is currently in the process of implementing an automated Contractor Performance Evaluation System.

6.67 Without the availability of an automated system, it would be difficult for procurement personnel to effectively manage vendor performance when they have a large number of contracts under their responsibility.

### Contract File Close Out Procedures

6.68 Most organizations stated that, upon completion of a contract, they have in place formal close out procedures. These include verification with users of the product or recipient of the service that the goods have been delivered or services rendered in accordance with the contract, the vendor has been paid and a vendor performance

evaluation form has been completed. All organizations uphold the principles of fairness and transparency by informing the vendor, at the solicitation phase, that a formal evaluation will be conducted upon completion of the contract and that the results will be provided to the vendor, who has an opportunity to provide comments.

### Corrective Measures

6.69 Applying corrective measures sends a message to vendors that there are consequences for not meeting contract performance objectives. Three of the eight organizations, the CRA, DCC and the Government of Newfoundland and Labrador, have used the results of the final evaluations to apply corrective measures such as suspending future bidding privileges of vendors for a specific or indefinite period.

### Defending Legal Challenges

6.70 If performance objectives are not clearly communicated in advance to vendors, poor performance is not properly documented, and corrective measures are applied incorrectly or without due process, organizations may have difficulty trying to justify their actions if legally challenged by vendors.

6.71 Paul Emanuelli, in the second edition of his book entitled *Government Procurement*, states: “While the courts have in some instances upheld a purchaser’s right to bar problematic suppliers, purchasers should ensure that these practices are developed and implemented in a reasonable and measured fashion.”

6.72 An example is the case of *Green Country Maintenance Ltd. v. Calgary (City)*. Mr. Emanuelli states: “The contract was terminated and the contractor’s tenders for subsequent contracts were rejected. The contractor challenged the city’s actions but the court upheld both the contract termination and subsequent tender rejections...”

6.73 The rationale for this was that “the contract in question contained a clause that allowed the city to terminate when a contractor failed to provide “quality service”. That clause also contained the right, depending on the severity of the circumstances, to declare a terminated contractor ineligible for future tendered work. The reservation of these rights, coupled with a well documented monitoring of performance, allowed the city to address the performance issue on an immediate and ongoing basis. In so doing, the city provided purchasers with a useful illustration of how contract management is an essential part of the procurement cycle.”

6.74 In Mr. Emanuelli’s opinion, the decision in this case “illustrates the importance of sound contract management in obtaining value-for-money under current and future contracts.”

### **Having a Vendor Performance Policy is Key**

6.75 A vendor performance policy formalizes the framework for managing vendor performance. It increases fairness by ensuring that all vendors are treated in an equal

and consistent manner. It also enhances transparency of the procurement process by providing information to vendors on what an organization's expectations are, and on what basis decisions will be made and actions undertaken.

6.76 Based on our literature research, a good vendor performance policy should:

- be linked to corporate objectives and risk management strategies;
- have full support from senior management;
- support fairness, openness and transparency;
- identify roles and responsibilities;
- establish performance measures and evaluation criteria;
- provide vendors with an opportunity to review and comment on evaluations;
- provide for an independent dispute resolution mechanism;
- establish corrective measures;
- use evaluation results for the validation of procurement strategies, evaluation criteria and contractor selection methodology to support continuous improvement of the procurement process;
- identify reporting requirements;
- provide for a system to capture vendor performance information; and
- indicate the requirement to share vendor performance information with procurement review committees to assist them in future contract award decisions.

6.77 We noted that DCC has documented, in its Performance Evaluation Guidelines, many of the above elements. For instance, as a link to corporate objectives, it states: "The overriding principle of the process is not to penalize contractors / consultants but to train them to meet the expectations of DCC". It also states that the process is "an important means of motivating quality contractors and consultants". One particular example of a process detailed therein is the appeal process for suppliers that have been rated as unsatisfactory and received a warning or suspension letter. In such cases:

- the contractor has the option of appealing within 10 days to the vice president of operations;
- within two weeks of receiving the appeal letter the vice president of operations will meet with the supplier to see if an agreement can be reached;
- if an agreement is not reached an alternative dispute resolution mechanism will be implemented; and
- during this process any suspension of bidding privileges/opportunity is upheld.

6.78 PWGSC - AB, as a common service organization, has a Vendor Performance Policy that applies to procurements it carries out on behalf of other federal departments and agencies, and RPCD has a customized program, which is consistent with this Policy.

6.79 The purpose of AB's Policy is to "provide for certain measures to be taken against a vendor as a result of a major instance of poor performance on a contract or a cumulative record of poor performance."

6.80 The Policy has been in place since 1996. However, roles and responsibilities are perceived to be unclear, and there are concerns about legal consequences. This contributes to corrective measures for non-performance being infrequently applied.

6.81 In 2007, an Independent Advisor to the Minister of PWGSC issued a Report on Public Opinion Research Practices of the Government of Canada. In that report, the Independent Advisor expressed concerns about the effectiveness of the government's vendor performance policy and made a number of recommendations with regard to the evaluation of vendor performance and client satisfaction. In response, PWGSC committed to updating its Vendor Performance Policy and including a performance evaluation process.

6.82 AB is revisiting the Policy in order to enhance the management of vendor performance with a view to continuous improvement. Key elements such as recognition of procedural fairness, discretion to take action in a fair and reasonable manner, and any measures taken being rationally related to the nature and severity of the problem, will continue to be the focus on any policy on vendor performance.

6.83 We note that work on revising the Policy started several years ago. There has been increased activity recently and PWGSC has advised us that the outstanding policy work and related consultations with stakeholders will be completed by March 31, 2011.

## Conclusion

6.84 A vendor performance program is crucial to support the accountability of procurement organizations for ensuring that the contracting process and all aspects of risks associated with contract administration are effectively managed.

6.85 Vendor performance management is best supported by a vendor performance program with an established framework and policy. The elements of the framework need to be aligned with corporate strategic goals and objectives, as well as risk mitigation strategies.

6.86 The organizations we interviewed all recognize the importance of managing vendor performance to meet contractual obligations. During our study, we noted a number of best practices used by various levels of government in Canada that enhance the management of vendor performance and reinforce the principles of fairness, openness and transparency.

6.87 A good vendor performance program helps to protect Crown interests and provides transparency on what the government's expectations are. This includes establishing standards and evaluation criteria for assessment; ensuring the various stakeholders know what their roles and responsibilities are; measuring, monitoring and evaluating performance; collecting reliable data for decision-making; documenting poor performance; and establishing a process to apply corrective measures.

6.88 Vendors are also entitled to know the rules of engagement. This includes being told what evaluation criteria will be used to assess their performance; having the opportunity to respond to evaluation results and, should they disagree, having access to an independent dispute resolution mechanism; and knowing what the outcomes will be for both parties.

6.89 If government organizations apply corrective measures by clearly communicating, in advance, evaluation criteria coupled with due process, it is more likely to be defensible in a legal action.

6.90 In addition to vendor performance being monitored on a day-to-day basis for operational needs, senior procurement review committees will greatly benefit by having vendor performance information available to assist in the mitigation of risks when making procurement strategy and contract award decisions as noted in our 2008-2009 review of the Procurement Challenge and Oversight Function.

6.91 Although the U.S. has a number of best practices in this regard, there are also several challenges that hinder capturing adequate performance information for government-wide sharing. As a result, the President has announced new requirements in the *Federal Acquisition Regulation* to strengthen the use of vendor performance information.

6.92 Public Works and Government Services Canada - Acquisitions Branch is revisiting its policy on vendor performance and this is an opportunity for it to consider the best practices and lessons learned of other organizations in order to develop a comprehensive and well reasoned approach to vendor performance that can serve as a model for others and contribute to improving the fairness, openness and transparency of the procurement process.