



OFFICE OF THE PROCUREMENT OMBUDSMAN



PROCUREMENT PRACTICE REVIEW

*FOLLOW-UP REPORT ON THE
2011-2012 PROCUREMENT PRACTICE REVIEWS*

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*PROMOTING FAIRNESS, OPENNESS AND TRANSPARENCY IN FEDERAL
PROCUREMENT*

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Main Points

What we Reviewed

1. In 2011-2012, the Office of the Procurement Ombudsman (OPO) conducted two procurement practice reviews which contained recommendations relating to the fairness, openness and transparency of federal procurement practices. The following reports were issued in 2011:
 - *Review of Procurement Practices related to Selected Advance Contract Award Notices (ACANs); and,*
 - *Professional Services (PS) Online*
2. In August 2014, OPO asked the Public Service Commission (PSC) and Public Works and Government Services Canada (PWGSC) to provide information regarding actions taken in response to, respectively, the recommendations from the ACANs and *PS Online* reviews. The *PS Online* review involved 10 departments and agencies; however, the recommendations were directed to PWGSC and, as such, it was the only department from that review involved in this follow-up exercise.
3. The purpose of the follow-up exercise was to determine whether the PSC and PWGSC considered the Procurement Ombudsman's recommendations and took actions or developed plans in relation to those recommendations. For each of the recommendations included in the reviews, OPO assessed the information provided for overall reasonableness and credibility. This report provides a summary, as well as specific examples, of progress made in responding to the recommendations.

Why It's Important

4. There are three main reasons why reporting on progress made in response to the Procurement Ombudsman's recommendations is important. First, it informs interested stakeholders of specific actions organizations have taken to improve their procurement practices. Second, by sharing information on changes being implemented by the organizations whose practices were reviewed, OPO facilitates other federal organization's ability to introduce similar improvements where applicable. Lastly, the information on the nature and extent of responses to the recommendations provides an indication of the usefulness of OPO's reviews.

What We Found

5. The Office is encouraged by the PSC's and PWGSC's commitment to improving procurement practices. Both organizations considered the recommendations and provided their respective plans and actions taken. Action was taken on all recommendations made in OPO's 2011-2012 reviews.

6. Regarding the review of *Selected Advance Contract Award Notices (ACANs)*, the PSC took action in response to the recommendations in the review. The PSC indicated it has implemented controls, such as having a Contract Review Board (CRB) review contracting activity to ensure all procurement activities comply with established regulations, policies and procedures. The CRB now reviews and approves all ACANs, as well as all non-competitive contracts exceeding \$25,000 and competitive contracts exceeding the North American Free Trade Agreement (NAFTA) threshold. In addition, the PSC's Executive Committee also periodically reviews contract information. The PSC indicated the percentage of service contracts awarded non-competitively has declined over the past four years, and the PSC has not used the ACAN method to award a contract since June 2011.
7. With respect to the review of *PS Online*, PWGSC has addressed the recommendations in the review. PWGSC advised that *PS Online* has been replaced by the ProServices contracting vehicle. Through the Professional Services National Procurement Strategy, PWGSC has made it easier for departments to use the procurement tools for professional services and reduce overlap for seven Methods of Supply, including ProServices. PWGSC is also using the results of an assessment of departmental contract files, which resulted in harmonized online training for professional services. In addition, a consultative process was undertaken, as part of PWGSC's National Procurement Strategy, with suppliers and departments and as a result performance indicators were established for ProServices.

Introduction

8. The Office published the following reports in June and December of 2011:
 - *Review of Procurement Practices related to Selected Advance Contract Award Notices (ACANs); and,*
 - *Professional Services Online (PS Online)*

Objectives

9. The objectives of this follow-up to the 2011–2012 reviews were to determine:
 - whether the organizations included in the scope of the reviews and, more specifically subject to OPO's recommendations, considered the recommendations with respect to their procurement practices;
 - whether action plans were prepared, approved, and responded to the recommendations; and
 - what actions have been undertaken on each recommendation and the extent to which each action had been completed.
10. OPO expected the organizations to have introduced changes to improve their procurement practices, with or without formal action plans.

Scope, Methodology and Timing of the Follow-up

11. OPO requested the PSC and PWGSC to provide information on actions implemented or planned as a result of the recommendations in the 2011-2012 reviews. This report reflects actions taken as of September 2014.
12. The approach used for this follow-up exercise differs from our procurement practices reviews. The assessment of progress made against recommendations was compiled from organizational self-assessments and assertions regarding departmental plans and actions. For each of the recommendations, OPO reviewed the information provided for overall reasonableness and credibility. This was done by:
 - verifying whether any contradiction existed between organizational progress report statements and other available information such as the publicly accessible information found on the internet and information in the review;
 - analyzing the organizations' responses to understand how their actions address the recommendations and whether they plan to monitor the results or effectiveness of these actions or changes; and
 - seeking clarification, as required, to ensure a clear understanding of the information provided by the organizations.
13. This report consists of an overview of the organizations' assertions regarding progress in implementing changes in response to the recommendations cited in the reviews. The information from the organizations provides a basis on which to assess the usefulness of OPO reviews and allows OPO to report on the progress made by the organizations to enhance the fairness, openness and transparency of their procurement practices.

Assessment of Implementation of Organizational Actions

Review of Procurement Practices related to Selected Advance Contract Award Notices (ACANs)

Controls have been implemented to ensure ACANs are being monitored

Summary of the 2011-2012 Review Findings

14. In 2009, the Public Service Commission (PSC) published four Advance Contract Award Notices (ACANs) simultaneously for the services of four external members of its Independent Audit Advisory Committee (IAAC). In 2010, a stakeholder raised concerns with OPO about favouritism and tailoring of requirements. The stakeholder disputed the rationale cited in the ACANs by claiming there were four ACANs issued the same day for the same job.
15. The review found the PSC:
 - knew there was more than one supplier who could do the job;
 - favoured the four existing external committee members; and

- tailored the requirements in each ACAN and created the potential for conflict of interest by having existing external members review the draft ACAN text prior to publishing.

16. The review also found the procurement practices on the files reviewed:

- did not comply with the letter or intent of applicable federal acts, regulations, trade agreements, and Treasury Board (TB) policies and procedures for the selection of the directed contracting process and the use of ACANs to award the contracts to the PSC's IAAC external members;
- did not support the principles of fairness, openness and transparency; and
- showed favouritism.

17. The recommendations in the review were that the PSC:

- seek Treasury Board of Canada Secretariat direction as to whether retroactively obtaining approval for these directed contracts was warranted;
- develop a plan for fulfilling long-term requirements such as those for the IAAC external members and ensure the requirements are executed in compliance with applicable acts, trade agreements, regulations and policies;
- undertake a review of directed contracting practices, including use of ACANs, to ensure procurement decisions are well documented and can withstand public scrutiny;
- have its Contract Review Board (CRB) review all requests for directed contracts proposing the ACAN instrument to ensure they are consistent with relevant policies and properly documented;
- consider providing senior management and other personnel involved in procurement with refresher training on the key acts, regulations and policies, relating to procurement.

Summary of Responses to OPO Recommendations

18. The PSC response stated it has taken action on the five recommendations.

19. The PSC indicated they did not exercise the option years in any of the four contracts with the committee members. The PSC stated that as a result, the final value of the contracts was less than \$25,000 and the PSC considered these as sole source contracts within the PSC's delegated authority, which did not require retroactive approval.

20. The PSC undertook an internal audit entitled *Audit of Selected Advance Contract Award Notices* that was published in 2011. The organization developed a Management Action Plan in response to this internal audit. One of the actions addressed the OPO recommendation that the PSC develop a plan for fulfilling long-term requirements such as those for the IAAC members. The PSC indicated that for future executive-level advisory services requirements, if needed, the PSC will proceed with a Request for Proposal which will be publicly posted.

21. The PSC indicated that in 2012-2013 their Internal Audit and Evaluation Directorate assessed the risks related to directed contracts, and since then it has been mandatory for them each year to provide assurance on directed contracts that impact financial statements. For example, this assurance was provided in the internal audit entitled *Audit of Cyclical Financial Controls – Revenue and Directed Contracts*. Assurance will be provided again in future Core Control audits.
22. The PSC also indicated their Executive Management Committee (EMC) reviews contract information on a periodic basis. In addition, the CRB continuously reviews the award of all contracts. The PSC also stated the percentage of contracts it awards non-competitively has dropped from 47% in 2009-2010 to 10% in 2013-2014. Further, the PSC has not used the ACAN method to award a contract since June 2011.
23. The PSC CRB updated its Terms of Reference in 2011 to “ensure that all procurement activities comply with establish regulations, policies and procedures”. The CRB is also responsible for reviewing all ACANs, all non-competitive contracts exceeding \$25,000, and competitive contracts exceeding the NAFTA threshold.
24. Finally, the PSC indicated that all senior managers who exercise delegated authorities must complete a knowledge assessment every five years for validation, which includes a procurement chapter. PSC managers that do not complete the refresher training following the expiry of the five year validation period have their authorities suspended until such a time it is completed.

Conclusion on Follow-up to Selected Advance Contract Award Notices (ACANs) Review

25. The PSC stated it has taken action to address the recommendations made in the review noted above. These actions include implementing controls to ensure procurement activities comply with regulations, policies and procedures. Specifically, the CRB oversight ensures that professional services contracts, including those where an ACAN is being used, are awarded in accordance with applicable policies and directives.

Review of Procurement Practices related to Professional Services (PS) Online

Improvements have been made for procuring professional services

Summary of the 2011-2012 Review Findings

26. The 2005 Federal Budget provided direction to streamline and consolidate purchasing government-wide to better leverage its buying capacity and achieve volume discounts from fewer suppliers who were already listed on existing methods of supply. The Budget designated PWGSC as the sole authority to establish various methods of supply.
27. With these changes, it became mandatory for federal organizations to use Standing Offers (SOs) and Supply Arrangements (SAs) for 10 specified commodities. Professional Services (PS) Online was established as a procurement vehicle which could be used to award contracts below the NAFTA threshold.

28. The OPO review found PWGSC's management of the *PS Online* tool contained gaps. Specifically, PWGSC:

- had not formally stated the objectives of *PS Online*;
- did not measure whether *PS Online* addresses the concerns of suppliers as a reasonable vehicle for having fair access to government business; and
- did not measure whether it is efficiently meeting the needs of departmental users as a faster tool than other available procurement tools.

29. In addition, the review found:

- even though PWGSC considered *PS Online* to be a key entry point for small and medium sized enterprises of professional services, it did not monitor its usage by departments or its efficiency.
- PWGSC performed detailed assessments of departmental users' contracting files to ensure compliance with government contracting policies and regulations. However, it did not consolidate the information from these assessments by department nor provide the information to the executive responsible for procurement, nor use the assessment results to establish areas for improvement to the *PS Online* tool.

30. The review recommended PWGSC should:

- continue with its plans to update the systems supporting *PS Online* in order to make it easier for departments to use the tool; continue in its efforts to minimize the overlap regarding the methods of supply that may be used for professional services, and consult with suppliers and the departmental procurement community as they make changes to the *PS Online* tool;
- optimize the benefits of its assessments of departmental *PS Online* files by: summarizing the results; communicating overall results to departmental management; and making appropriate refinements to its training of departmental users;
- set guidelines for *PS Online* processing time; include indicators to assess *PS Online* performance; and assist departmental users in improving compliance.

Summary of Responses to OPO Recommendations

31. The PWGSC response stated it has taken action on the three recommendations.

Updating the systems and minimizing overlap

32. PWGSC indicated they are making it easier for departments to use the procurement tools for procuring professional services. Through the Professional Services National Procurement Strategy, there is a single entry point (the ePortal) for clients to access pre-qualified suppliers of professional services in a single system (the Centralized Professional Services System).

33. *PS Online* has been replaced by a new tool for procuring professional services, ProServices. This new tool contains 351 categories, combining the categories from Task Based Informatics Professional Services (TBIPS) and Task and

Solutions Professional Services (TSPS) (task portion only). Further, overlap has been eliminated by standardizing and harmonizing business rules, as a result of the Professional Services National Procurement Strategy, for seven Methods of Supply, including ProServices.

34. PWGSC also indicated that consultations with suppliers and clients occurred between June 2012 and February 2013. These consultations were based on the results of the 2011 consultations for the Professional Services National Procurement Strategy and the feedback received for ProServices.

Optimizing benefits of assessments

35. PWGSC stated they performed an assessment of departmental contract files awarded in 2011-2012. The final report on these files was provided to the PWGSC Office of Small and Medium Sized Enterprises. The Report was also presented to members of the Professional Services Steering Committee, which is responsible for decisions on professional services. The report identified possible refinements to training material and an assessment process for all professional services in a single ePortal. The online harmonized training for professional services is available on the PWGSC website.

Setting guidelines for processing time and performance indicators

36. PWGSC indicated they have set guidelines for *PS Online* and completed an analysis of processing times. For *PS Online* for the 2012-2013 fiscal year, non-competitive contracts were awarded within seven days from completing a search within *PS Online*, which is close to the stated standard of five days. Further, the throughput time for competitive contracts of 41 days was well below the stated average of 80 days. The performance indicators established through the consultative process completed for the Professional Services National Procurement Strategy were communicated as part of the Canada-wide consultations for Pro Services.

Conclusion on Follow-up to Professional Services Online

37. PWGSC stated it has addressed the recommendations made in the review noted above. These actions include consulting with departments and suppliers and reducing overlap of the professional services procurement tools. PWGSC has also summarized their assessments to strengthen decision making and set guidelines for processing time and performance indicators.

Overall Conclusion

38. The PSC and PWGSC assessed the recommendations from OPO's two 2011-2012 procurement practices reviews and provided information on their respective plans and actions.
39. OPO is encouraged by the fact the two organizations have responded to the recommendations regarding their procurement practices.
40. OPO appreciates the extent of cooperation received during this follow-up exercise and is satisfied with the progress made by participating organizations in improving the fairness, openness and transparency of the assessed procurement practices.

Annex A – OPO Recommendations and Departmental Responses

Selected Advance Contract Award Notices (ACANs)	
OPO Recommendations	Departmental Response
<ul style="list-style-type: none"> • Seek TBS direction as to whether retroactively obtaining appropriate approval for these directed contracts is warranted; • Develop a plan for fulfilling long-term requirements such as those for the Independent Audit Advisory Committee external members and ensure the requirements are executed in compliance with applicable acts, trade agreements, regulations and policies; • Undertake a review of directed contracting practices, including use of ACANs, to ensure procurement decisions are well documented and can withstand public scrutiny; 	<p>The PSC indicated since it did not exercise the option years for the contracts to the committee the final value of the contracts was less than \$25,000. Therefore, they were sole source contracts within the PSC’s delegated authority; hence retroactive approval was not required.</p> <p>The PSC indicated it prepared a Management Action Plan in response to their internal audit entitled <i>Audit of Selected Advance Contract Award Notices</i>. One of the actions addressed the recommendation from the OPO review that the PSC develop a plan for fulfilling long-term requirements such as those for the Independent Audit Advisory Committee member. The PSC indicated that for future executive-level advisory services requirements, if needed, the PSC will proceed with a Request for Proposal which will be posted on the Government electronic Tendering System (GETS).</p> <p>The PSC indicated that starting in 2012-2013 their Internal Audit and Evaluation Directorate assessed the risks related to directed contracts and it will be mandatory each year to give assurance over these areas that impact financial statements. This was done in the internal audit entitled <i>Audit of Cyclical Financial Controls – Revenue and Directed Contracts</i> that included directed contracts in its scope and will be done again in the Core Control audits in the future. Directed contracts will be included in the audit of cyclical financial controls.</p>

<ul style="list-style-type: none"> • Have its Contract Review Board review all requests for directed contracts proposing the ACAN instrument to ensure they are consistent with relevant policies and properly documented; • Consider providing senior management and other personnel involved in procurement with refresher training on the key acts, regulations and policies, relating to procurement. 	<p>The PSC determined that, overall, controls for the management of directed contract procurement are adequate.</p> <p>The PSC indicated its Contract Review Board (CRB) updated its Terms of Reference. The mandate of the CRB is to “ensure that all procurement activities comply with established regulations, policies and procedures”. It is also required to review all ACANs, regardless of value.</p> <p>The PSC indicated that all of their senior managers who exercise delegated authorities must take refresher training every five years or they will not be permitted to exercise their delegated authorities.</p>
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Professional Services Online

OPO Recommendation	Departmental Response
<ul style="list-style-type: none"> • Continue with its plans to update the systems supporting <i>PS Online</i> in order to make it easier for departments to use the tool; continue in its efforts to minimize the overlap regarding the methods of supply that may be used for professional services, and consult with suppliers and the departmental procurement community as they make changes to the <i>PS Online</i> tool; 	<p>PWGSC indicated through the Professional Services National Procurement Strategy, there is a single portal for clients to access pre-qualified suppliers of professional services in a single system, the Centralized Professional Services System (CPSS).</p> <p>Also, ProServices has replaced <i>PS Online</i>. This new tool contains 351 categories, combining the categories from Task Based Informatics Professional Services (TBIPS) and Task Based and Solutions Professional Services (TSPS) (task portion only). Further, overlap has been eliminated by standardizing and harmonizing business rules, as a result of the Professional Services National Procurement Strategy, for seven Methods of Supply, with ProServices being one of them.</p> <p>PWGSC indicated that consultations with suppliers and clients occurred between June 2012 and February 2013. These consultations were based on the results of</p>

<ul style="list-style-type: none"> • Optimize the benefits of its assessments of departmental <i>PS Online</i> files by: summarizing the results; communicating overall results to departmental management; and making appropriate refinements to its training of departmental users. • Set guidelines for <i>PS Online</i> processing time; include indicators to assess <i>PS Online</i> performance; and assist departmental users in improving their performance. 	<p>the 2011 consultations for the Professional Services National Procurement Strategy and the feedback received for ProServices.</p> <p>PWGSC indicated they have performed summary assessments of departmental files on contract files awarded in 2011-2012. The final report on these files was provided to the Office of Small and Medium Enterprises Strategic Engagement section. The report was also presented to members of the Professional Services Steering Committee, which is responsible for decisions on professional services. This work has identified possible refinements to training material and a process for the assessment of all professional services in a single ePortal.</p> <p>PWGSC indicated they have set guidelines for <i>PS Online</i> and did an analysis of processing times. For <i>PS Online</i> for the 2012-2013 fiscal year, competitive contracts were awarded within seven days from completing a search within <i>PS Online</i>, which is close to the stated standard of five days. Further, the average throughput time for competitive contracts of 41 days was well below the stated standard of 80 days. The performance indicators established through the consultative process completed for the National Procurement Strategy were communicated as part of the Canada-wide consultations for ProServices.</p>
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