



Office of the Procurement  
Ombudsman

Bureau de l'ombudsman  
de l'approvisionnement

## OFFICE OF THE PROCUREMENT OMBUDSMAN



# CHAPTER 2

## PROCUREMENT PRACTICES REVIEW

### *SUPPLIER DEBRIEFINGS*

# SUPPLIER DEBRIEFINGS

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## EXECUTIVE SUMMARY

Debriefing is the process by which suppliers are given the results of the evaluation of their bid on competitive procurements. Information can be provided to a bidder by telephone, in writing or through a face-to-face meeting.

Information disclosure for debriefings is encouraged by a variety of legislative, regulatory and policy frameworks. Debriefings also make good business sense.

The *Financial Administration Act* (FAA) provides Treasury Board the power to set rules relating to the disclosure of basic information on government contracts valued in excess of \$10,000. The Treasury Board Contracting Policy states that debriefings should be provided to unsuccessful bidders, and it is specific in what can be disclosed. The North American Free Trade Agreement (NAFTA) and the World Trade Organization – Agreement on Government Procurement (WTO-AGP) include requirements in more general terms to disclose information to unsuccessful bidders. The *Access to Information Act* identifies what information cannot be disclosed to a third party, such as commercially confidential information.

All of these instruments promote fairness, openness and transparency in the procurement process.

Under government policy, debriefings should be provided to suppliers, upon request. Our consultations revealed that some suppliers are unaware they may request a debriefing and consequently they have not received one. Others who have received debriefings feel frustrated by a lack of what they consider relevant and adequate feedback. This may be because suppliers have not been made aware of the legal obligations and constraints that procurement personnel are working under, or because some of the requested information cannot be provided due to commercial confidentiality.

We reviewed the debriefing and disclosure practices of six government departments and agencies: the Canadian International Development Agency (CIDA), Citizenship and Immigration Canada (CIC), the Correctional Service of Canada (CSC), the Department of National Defence (DND), Indian and Northern Affairs Canada (INAC), and Public Works and Government Services Canada (PWGSC).

We note that procurement personnel have to take into consideration the various statutes and applicable departmental policies related to debriefing and information disclosure, which are not aligned, leading to differences in interpretation and application. This has contributed to the perception among suppliers that federal government procurement may not be being carried out in a fair, open and transparent manner and has eroded trust and confidence – the opposite of the government's objective.

We found that no mechanism exists in government to collect information, analyze, monitor, report and ensure continuous improvement in the process, so there is little statistical data on the number of debriefings and their effectiveness.

Our review indicates that there are no consistent standards across and within government departments for the content, nature and extent of debriefings. Procurement personnel do not have a “safe zone” (parameters as to what information can and cannot be disclosed) in which to operate. However, CIDA, INAC, and PWGSC have made significant efforts to inform bidders of their right to request a debriefing and have developed materials to guide their procurement personnel in this area. We also note that CIDA and PWGSC provide-point specific disclosure standards to assist their procurement personnel in addressing the debriefing challenges; these are available on their respective departmental websites.

Some procurement personnel believe that detailed debriefings may provide grounds for legal actions and appeals so they tend to limit information they disclose to mitigate the risks of a formal complaint. This has contributed to the development of risk-averse behaviour in federal government procurement and exacerbates the frustration of both suppliers and procurement personnel.

Giving suppliers more consistent information, however, should reduce the number of challenges and complaints. The Organisation for Economic Co-operation and Development (OECD) noted in its 2007 report that the UK had been successful in this regard and that, “although the causality between the introduction of detailed debriefings and legal reviews cannot be proven, there has been a sharp decrease in the last decade in the number of reviews.”

Most procurement personnel recognize that it is beneficial for suppliers to receive a debriefing. However, most are also under the impression that these debriefings must be delivered through face-to-face meetings. One concern expressed to OPO was that publicizing the right to request a debriefing and delivering more-detailed debriefings may increase the demand for debriefings and place greater strain on procurement personnel at a time when the resources of the procurement community are severely stretched. While we understand the challenges, we wish to emphasize that capacity issues cannot override suppliers’ right to know why they were not successful and how to improve their future bids. We believe that these concerns can be addressed by departments and agencies establishing bid information disclosure standards and methodologies that create an understanding of what, when and how information is disclosed.

For the most part, specialized training in communication on how to give “bad news” to unsuccessful suppliers is not provided consistently across government. There is no evaluation done to ensure procurement personnel have the necessary skills and competencies to conduct debriefings. The quality of debriefings is largely dependent on the perspective and experience of the procurement personnel involved. Inconsistent practices may lead to inconsistent messaging which can reinforce the perception that all suppliers are not being given information in an equal manner. This may contribute to the escalation into disagreement, confrontation and subsequent formal complaint.

The lack of awareness of the importance of debriefings may be a factor in procurement personnel’s not informing bidders of their right to request a debriefing and failing to inform them of the outcome of a solicitation in a timely manner.

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By definition, a competitive procurement process involves more than one bidder. Consequently, for each contract awarded to a successful bidder, there is usually at least one supplier that has “lost.” There is, therefore, the inherent risk that one or more suppliers will be unhappy with the outcome of the process. This situation may discourage suppliers from competing for government contracts, the government itself loses - it faces significant challenges in attracting and retaining suppliers.

Debriefings benefit both the government and suppliers. A debriefing allows suppliers to judge how fairly they have been treated and increases their confidence that the procurement process has also been open and transparent. By acknowledging suppliers’ investment of time, effort and resources, it may encourage them to do business with the government again. A debriefing could also improve their understanding of how to prepare a bid, and identify areas for improvement to increase their chances of success in winning future contracts.

In addition, through a debriefing, the government may obtain information from bidders as to how procurement practices could be improved in future.

An effective debriefing allows the government to improve its general communications with the supplier community, increasing the likelihood that contracts will be awarded in an atmosphere of cooperation and mutual respect. This should minimize the likelihood of delays and legal challenges and assist the government in meeting its program needs; it should also reduce the financial strain on suppliers and save money for taxpayers.

The UK Office of Government Commerce (OGC) has led the way in raising the debriefing bar. Its report acknowledges the fact that the rewards (benefits) outweigh the risks. The OGC analyzes the debriefing process and provides guidance, advice, tips and instructions to its procurement personnel with a view to establishing a reputation as a fair, open and ethical buyer.

Suppliers that have expended resources to bid on government procurement should have the right to know whether and why they were successful or not, and must know that they can request a debriefing to obtain that information. However, to manage expectations, procurement personnel and suppliers should know what information they can expect to give and receive following a competitive procurement.

The government does not want to discourage suppliers from submitting bids. Quite the contrary – it wants to retain and increase its supplier base to ensure competition, which will result in lower costs, better quality goods, services and construction, and a greater assurance of value for money in the expenditure of public funds.

To achieve this, action is needed by departments and agencies to set in place standards to:

- inform suppliers of their right to request a debriefing and recourse mechanisms;
- develop consistent core principles and an approach (creating a “safe zone”) to ensure suppliers and procurement personnel have a clear understanding and expectation of what a debriefing will or will not include;

## SUPPLIER DEBRIEFINGS

- establish clear instructions on options for delivering a debriefing, such as by telephone, in writing or face-to-face, and tailor the method to the complexity and materiality of the procurement; and
- ensure procurement personnel have the appropriate skills and are adequately trained.

PWGSC should develop a standard approach for debriefings. Once established, other departments and agencies may wish to adapt this for their own use based on their operational needs.

The Office of the Procurement Ombudsman firmly believes that the implementation of these recommendations will significantly enhance suppliers' perception of fairness, openness and transparency and help to strengthen the trust and confidence of Canadians in the federal procurement process.

All departments and agencies involved in this review have been provided an opportunity to review this report and their comments have been taken into consideration in finalizing this chapter.

## BACKGROUND

### Context

2.1 Contracts issued by the government of Canada must comply with a number of statutes and policies.

2.2 Under the *Financial Administration Act* (FAA), “The Government of Canada is committed to taking appropriate measures to promote fairness, openness and transparency in the bidding process for contracts with Her Majesty for the performance of work, the supply of goods or the rendering of services.” The FAA authorizes Treasury Board (TB) to act for the government “...on all matters relating to (a) general administrative policy in the federal public administration...” The FAA also provides Treasury Board with the power to set rules relating to the disclosure of basic information on contracts valued in excess of \$10,000.

2.3 With respect to debriefing suppliers that have submitted bids for federal government procurements, the TB Contracting Policy states that “debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder’s right to the confidentiality of specific information.”

2.4 Three Trade Agreements, to which Canada is a signatory, also have procurement and contracting obligations: the North American Free Trade Agreement (NAFTA), the World Trade Organization – Agreement on Government Procurement (WTO-AGP), and the Agreement on Internal Trade (AIT). Of these, NAFTA and WTO-AGP have specific provisions where the disclosure of information must be provided to unsuccessful bidders.

2.5 Furthermore, Canada’s *Access to Information Act* (AIA) gives any supplier the right to request access to any record under the control of a government organization. The AIA also sets out exceptions to the corresponding obligation of the government institution to disclose information. Any information that cannot be disclosed to a third party under the AIA cannot be disclosed during a debriefing, regardless of the requirements of the Trade Agreements or the TB Contracting Policy.

2.6 While the majority of federal government procurements are not subject to the Trade Agreements, mainly due to their dollar value being under the thresholds, they are subject to the AIA and the debriefing requirements under the TB Contracting Policy.

### Description

2.7 Debriefing by the government of Canada takes place after contract award. It is the process by which suppliers are given the results of the evaluation of their bid. The method by which a debriefing is carried out can vary - it can be by telephone, in writing or through a face-to-face meeting.

2.8 A debriefing is the one opportunity procurement personnel have during the procurement process to let a supplier know how its bid was evaluated and why it was or was not selected. Most often, that bidder has been unsuccessful in winning a competitive contract, although successful bidders can also request debriefings. Debriefings allow suppliers to judge the fairness of the procurement process and how they were treated.

### **Why it matters**

2.9 The government's commitment to achieving "...best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people" carries the implicit need to obtain the goods, services and construction it requires from the best possible suppliers. This is mainly achieved through competition.

2.10 By definition, a competitive procurement process involves more than one bidder. Consequently, for each contract awarded to a successful bidder, there is usually at least one supplier that has "lost." There is, therefore, the inherent risk that one or more suppliers will be unhappy with the outcome of the process. This situation may discourage suppliers from competing for government contracts, the government itself loses in that it faces significant challenges in attracting and retaining suppliers.

2.11 If suppliers are unable to obtain a debriefing or do not receive relevant information, they can become discouraged from bidding, leading to a smaller supplier base, higher procurement costs, and lower quality goods, services and construction.

2.12 In addition to making good business sense, delivering debriefings benefits both the government and suppliers.

2.13 Benefits to the government:

- greater likelihood that, having failed to win a particular contract, a well-debriefed supplier will return to compete actively and effectively for future opportunities, increasing the competition to ensure best value for Canadians;
- increased ability to demonstrate to the supplier community that procurement activities are being carried out fairly, openly and transparently, in accordance with the legislative, regulatory and policy framework; and
- obtain information from bidders as to how the government might improve procurement practices in future.

2.14 Benefits to suppliers:

- acknowledgement of their investment of time, effort and resources, which may encourage them to do business with the government again;
- offers guidance to improve their chances of doing business with the public sector and help them rethink their approach so their future bids are more successful; and

- increased confidence that federal government procurement is being carried out in full compliance with the legal, regulatory and policy framework, and in accordance with the published bid evaluation process and contractor selection methodology that are advertised as an integral part of every bid solicitation.

2.15 Also, giving suppliers more consistent information should improve the relationship between government and suppliers, and lower the number of challenges and complaints to be dealt with. In 2007, the Organisation for Economic Co-operation and Development (OECD) report on integrity in public procurement<sup>1</sup> commented that:

- the UK had been successful in this regard and noted that, “although the causality between the introduction of detailed debriefing and legal reviews cannot be proven, there has been a sharp decrease in the last decade in the number of reviews (from approximately 3,000 in 1995 to 1,200 in 2005).”
- “the most important result of debriefing is that it reduces the likelihood of a legal challenge because it proves to suppliers that the process has been carried out correctly and according to the rules of procurement and probity.”

### Focus of the review

#### Objectives

2.16 This review was undertaken to identify effective practices and key success factors in debriefing suppliers following contract award.

#### Scope and period under review

2.17 The review was carried out from October 2008 to March 2009. We reviewed existing practices and the structure and tools by which debriefings are performed in four departments and two agencies, shown in Table 1 below, selected to provide a reasonable overview of practices within federal government organizations and a good cross-section in terms of dollar value and number of contracts issued.

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<sup>1</sup>*Integrity in Public Procurement: Good Practice from A to Z*. Organization for Economic Co-operation and Development, 2007.

## SUPPLIER DEBRIEFINGS

**Table 1**

### 2007 Purchasing Activity Report

(Total contract awards, including net amendments but excluding call-ups against Standing Offers)

Department or Agency	Contract Type and Threshold Value	Number of Contracts	Dollar value (000's)
Canadian International Development Agency (CIDA)	Below \$25,000 (competitive + non competitive)	1,316	11,683
	Above \$25,000 Competitive *	312	160,719
	Non-Competitive	78	3,719
	<b>Total</b>	<b>1,706</b>	<b>176,121</b>
Citizenship and Immigration Canada (CIC)	Below \$25,000 (competitive + non competitive)	2,765	8,721
	Above \$25,000 Competitive*	74	42,052
	Non-Competitive	27	22,385
	<b>Total</b>	<b>2,866</b>	<b>73,158</b>
Correctional Service of Canada (CSC)	Below \$25,000 (competitive + non competitive)	69,301	83,509
	Above \$25,000 Competitive*	824	237,583
	Non-Competitive	<b>65</b>	<b>12,879</b>
	<b>Total</b>	<b>70,190</b>	<b>333,971</b>
Department of National Defence (DND)	Below \$25,000 (competitive + non competitive)	9,996	114,150
	Above \$25,000 Competitive*	3,579	4,983,801
	Non-Competitive	1,225	2,335,038
	<b>Total</b>	<b>14,800</b>	<b>7,432,989</b>
Indian and Northern Affairs Canada (INAC)	Below \$25,000 (competitive + non competitive)	2,155	20,808
	Above \$25,000 Competitive*	136	102,556
	Non-Competitive	66	8,564
	<b>Total</b>	<b>2,357</b>	<b>131, 928</b>
Public Works and Government Services Canada (PWGSC)**	Below \$25,000 (competitive + non competitive)	22,845	86,683
	Above \$25,000 Competitive*	3,838	2,487,431
	Non-Competitive	364	247,105
	<b>Total</b>	<b>27,047</b>	<b>2,821,219</b>

\*Includes Advance Contract Award Notices (ACANs).

\*\*PWGSC purchasing volumes include only procurements when it contracts for itself. Purchasing volumes attributed to other departments may actually be contracted through PWGSC, in their role as a common service organization. In these instances, PWGSC would take primary responsibility for providing supplier debriefings for those contracts.

### Methodology

2.18 We examined the federal legislative, regulatory and policy framework directly governing or relating to procurement; conducted interviews with suppliers' associations, government procurement personnel, specific subject matter experts, and legal professionals representing both suppliers and government; and reviewed relevant government documents related to debriefing.

2.19 We also looked at concerns and complaints related to debriefings that were raised through recourse mechanisms for federal government procurements.

2.20 Finally, we carried out an Internet search and library research to see how other procurement organizations, nationally and internationally, balance the challenge of debriefing suppliers while respecting their privacy laws.

### What we expected

2.21 It is recognized in legislation, trade agreements and the TB Contracting Policy that, upon request, bidders have the right to obtain information regarding the result of a competitive procurement process that they bid on. We expected that departments with significant purchasing volumes would have in place most of the elements specified below, while departments with smaller purchasing volumes would have at least some of these elements in place, to provide adequate guidance to their procurement personnel:

1. Clear policy direction as to why, when and method by which debriefings are to be delivered to suppliers, and how this right is communicated to the supplier community.
2. Identification of roles and responsibilities for personnel involved in the procurement process.
3. Clear indication that those responsible for debriefings have received proper training and instruction.
4. Appropriate documentation related to the debriefing is on the contracting file.
5. Guidance for procurement personnel such as guidelines, templates or other structured approaches, including what information can and cannot be communicated to suppliers.
6. Reporting: how many, to whom, when and method of delivery; what was the outcome; and were there any supplier concerns.
7. Oversight and monitoring: analysis of reports to assess efficiencies as well as lessons learned for continuous improvement of the procurement process.

## Findings

### General findings

2.22 We noted that although most departments carry out debriefings, this is done inconsistently and in various ways. We did not find any reports on how many debriefings there are in any given period, who gives them and who does not, the methods of delivering debriefings, or what the results are. As a result, information related to debriefings is not readily quantifiable.

### Departmental debriefing practices

2.23 Despite the lack of a formalized reporting system, we found various approaches to and tools used for debriefings. We also found differences in the way suppliers are informed about debriefings.

2.24 CIDA offers comprehensive information describing the bidder's right to a debriefing. In addition to the *General Conditions (RFP)* for bid solicitation documents, CIDA has a document entitled *Debriefing and Disclosure of Information to Bidders Following the Evaluation of Proposals*, both are found on CIDA's website.

2.25 CIDA has also developed a comprehensive *Guide to Debriefing Bidders*, which is an internal document for its own procurement personnel. It includes a template for procurement personnel to complete when they conduct debriefings as well as guidance on how and what to disclose.

2.26 DND has a *Procedural Overview – Contracting* document for internal use by its own procurement personnel. It addresses debriefing unsuccessful bidders, and can be found on the DND website.

2.27 INAC's booklet entitled *The Procurement Strategy for Aboriginal Business: A Guide to Federal Government Procurement*, found on its website, provides information to suppliers on debriefing.

2.28 PWGSC has a debriefing and disclosure policy, which is in their Supply Manual for procurement personnel and available through the PWGSC website. We have been informed that, subsequent to the completion of this review, as of April 1, 2009, PWGSC has disclosed on MERX that suppliers have a right to request a debriefing.

2.29 PWGSC also references debriefing in a number of internal documents developed by individual sectors. These documents are generally commodity-specific and support the policy as stated in the Supply Manual. For example, there is a document entitled *Basic Guidelines for Bid Evaluation Process and Contractor Selection Methods*. There is also a specific document for professional services procurements that addresses debriefing; *Contracting Process and Contract Amendments under the General Supply Arrangements*. We also found that there are instructions to be included in bid solicitations for architects and engineers that are not found in other bid solicitation templates.

2.30 We were unable to confirm that CSC or CIC have any formal guidance regarding debriefings, nor did we find any information on their websites concerning this.

### **The government's perspective**

2.31 We found that there are two main factors affecting debriefing in Canada:

#### Misaligned information disclosure requirements

2.32 As debriefing is the process by which information is provided to a supplier as to why its bid was evaluated the way it was, debriefing policies have to be linked with information disclosure policies.

2.33 The FAA provides TB with the power to set rules relating to the disclosure of basic information on contracts valued in excess of \$10,000.

2.34 The TB Contracting Policy, which is directed at most departments and agencies, states that "Debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder's right to the confidentiality of specific information.". Failure to follow the policy does not provide any rights to suppliers.

2.35 NAFTA and WTO-AGP include requirements concerning information to be given to unsuccessful suppliers which are described in a more general manner using an "objective-based" approach. For example, the text of NAFTA states that an unsuccessful supplier should be given: "...the relevant characteristics and advantages of the tender selected," indicating that an unsuccessful supplier is entitled to some degree of information about the winning bid in a debriefing.

2.36 The AIA has stringent requirements regarding what cannot be disclosed to suppliers. Without the consent of the third party to whom the information relates, the AIA prohibits a government organization from disclosing to a supplier:

- trade secrets of a third party;
- financial, commercial, scientific or technical information treated as confidential by the third party;
- information, the disclosure of which could reasonably be expected to result in a material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party;
- information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party; and
- if the third party is an individual, information about the individual including information relating to financial transactions in which the individual has been involved.

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2.37 The AIA gives the right to a government organization to refuse to disclose information, the disclosure of which could reasonably be expected to interfere with the contractual or other negotiations of that government organization.

2.38 In summary, when procurements are subject to NAFTA or WTO-AGP, procurement personnel are obligated to provide suppliers with information in accordance with these agreements. At the same time they must respect the commercial confidentiality of information provided by other suppliers as per the AIA disclosure requirements.

2.39 The PWGSC Supply Manual, which is used primarily by PWGSC contracting officers, provides some specifics regarding what can be disclosed, such as the name of the winning supplier and bid price, and the reasons why the supplier who requested the debriefing was unsuccessful.

2.40 Table 2 below summarizes the applicable debriefing and disclosure requirements under legislative, regulatory and policy frameworks and reflects the challenges procurement personnel face in interpreting these varying disclosure standards. For comparison purposes, the table includes the debriefing and disclosure requirements of:

- PWGSC, as a common service organization and contracting arm of the federal government;
- the US government's *Federal Acquisition Regulations* which govern purchases of goods and services by nearly all US federal buying agencies – the US is also a signatory to NAFTA and WTO-AGP; and
- the World Bank, from an international perspective.

**Table 2 Debriefing and Disclosure Requirements**

Information	Financial Administration Act	Trade Agreements	TB Policy	PWGSC Supply Manual	US FARs	World Bank
Name of winning bidder, and bid price	✓ (over \$10,000)	✓	✓ (over \$10,000)	✓	✓	✓
Reasons why a bidder was not successful		✓	✓ (factors and criteria)	✓	✓	✓

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Relative advantages of winning bid		✓			A summary of the rationale for award	
Names of other bidders				✓ (Corporate only)	✓	✓
Overall ranking of all bidders				Bid scores (Corporate only)	✓	
Names and bid prices of each bid evaluated				✓ (Corporate only)		✓
Names of bidders rejected, and the reason for rejection						✓

### Risk of formal complaints

2.41 When suppliers are dissatisfied with the procurement process, they can always take legal action through the courts.

2.42 Suppliers can also raise the issue before the Canadian International Trade Tribunal (CITT) for review, if the procurement was subject to trade agreements. Since 1994, the CITT has dealt with a number of complaints based on or relating to debriefing. There are a number of CITT cases where the government's debriefing practices and information disclosure standards could have been more informative in order to meet the obligations under the trade agreements.

2.43 Since May 2008, suppliers may also bring their concerns to the Office of the Procurement Ombudsman (OPO) for review, for procurements within its jurisdiction. While the OPO can link some of those concerns to information given or not given at debriefings, one of the most common complaints from suppliers is the amount of time to obtain information or even a call back from procurement personnel.

2.44 As procurement personnel are aware that suppliers can take legal action or contact the CITT or the OPO if dissatisfied, they are extremely careful about what they say at debriefings, where they have to give "bad news" and explain to suppliers why they were unsuccessful. Robert C. Worthington, a lawyer specializing in procurement, perhaps best summarized the thoughts of some of the specialists the OPO spoke to. He

wrote, “relatively few suppliers complain to the CITT, but the fear of a CITT challenge occurs every day and it causes federal procurement to become positively risk-adverse in decision making.”<sup>2</sup>

2.45 The concept of “fear” referenced by Mr. Worthington is not exclusive to the government of Canada. It was similarly referred to by the UK Office of Government Commerce (OGC) in a 2003 report<sup>3</sup>: on Supplier Debriefing: “Procurement staff can be concerned that the result of the debriefing infraction proceedings against the government could be invoked or that legal proceeding against the contracting authorities themselves might be taken in the High Court. The fear is that the disappointed candidate or tenderer might try to take the information revealed in the debriefing session out of context, especially where the criteria underpinning the decision might seem subjective.”

2.46 Concern about the repercussions of a complaint has negatively affected debriefing practices to such an extent that it has likely contributed to the growth of a risk-averse culture in the federal government procurement community.

### **The suppliers’ perspective**

2.47 Suppliers dedicate considerable human and financial resources to preparing their bids in response to a competitive solicitation. However, we found evidence to suggest that many suppliers do not feel that they are receiving enough information, or feel they are not receiving information in a timely manner, on the outcome of the solicitations they had bid on.

2.48 In a 1996 survey<sup>4</sup> of its members regarding concerns about lost bids, the CFIB found that “one in four respondents had concerns about the manner in which the federal government announced its decision.” Also, “Fully two thirds (67%) indicated that the purchasing agent never provided any feedback on why the bid was lost. In addition, nearly half (48%) said that they were never (even) notified by the purchasing agent that the bid was not chosen.”

2.49 Appearing before the House of Commons Standing Committee on Government Operations and Estimates on February 26, 2009, the CFIB stated that this is still an obstacle. A 2008 survey indicated that 18.5% of respondents did not know why their bids were rejected by the federal government, whereas only 10.1% of respondents indicated this lack of knowledge for all levels of public procurement. They noted that “if you don’t win the bid, you’re usually not told why you lost it.”

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<sup>2</sup> “CITT Corner”, *Summit* magazine, March 2005.

<sup>3</sup> 2003 United Kingdom Office of Government Commerce report entitled *Supplier Debriefing*

<sup>4</sup> 1996 CFIB Survey entitled *Federal Government Procurement and Small Business: Opportunity or Opportunity Lost?*

2.50 Suppliers invest time, effort and resources in preparing and submitting bids. The CFIB, which represents small businesses that usually bid on smaller requirements, also reported that “many have said that contracts are difficult to find and when they do find one, they can involve so much paperwork. In fact, we [had] one member tell us that it cost between \$3,000 to \$6,000 to put together a federal government bid, and it’s difficult to get answers to questions when you’re going through the bid process.”

A number of concerns raised to the OPO by the supplier community support the CFIB findings.

### **Other jurisdictions**

2.51 Much has been written in recent years in Canada and around the world on the subject of debriefing suppliers that have bid on government procurements.

2.52 Many public organizations are promoting supplier debriefings as part of their procurement process. In Canada and abroad debriefings are considered an important element in the ongoing effectiveness of public procurement systems, creating a relationship of trust with suppliers through the assurance of fair practices.

2.53 In 2003, the UK Office of Government Commerce (OGC) published a report<sup>5</sup> stating that “debriefing is important for several reasons but mainly because it helps suppliers to improve their competitive performance.” The report noted the significant benefits that can accrue to the government from effective debriefing practices, such as identifying ways to improve the procurement process, “encouraging better bids from debriefed suppliers in the future,” and helping to “establish a reputation as a fair, open and ethical buyer with which suppliers will want to do business in the future.”

2.54 Noting that debriefing is an important learning tool through which procurement personnel receive feedback from industry and learn from suppliers, the OGC stated that: “Larger suppliers may have considerable experience of different procurement techniques and policies and may be able to offer useful observations based on this experience. Conversely smaller companies new to public sector procurement may have fresh insights or ask searching questions.”

2.55 It further noted that “effective debriefing requires time and effort, and also carries an element of risk, but these are outweighed by the potential benefits...” and that “effective debriefing should always reduce the likelihood of a legal challenge because it will prove to suppliers that the process has been carried out correctly and according to the rules of procurement and propriety.”

2.56 Canada is not the only country facing the challenge of disclosing the “relevant characteristics and advantages of the selected tenderer” under NAFTA and WTO-AGP. Other countries are signatories to these agreements as well, and they must also

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<sup>5</sup> 2003 United Kingdom Office of Government Commerce report entitled *Supplier Debriefing*

balance this obligation against the rights and restrictions pursuant to their respective disclosure of information laws. The US overhauled its acquisition regulations in the 1990s and expanded the information that is to be disclosed on a standard basis, thereby reducing disclosure ambiguity.

2.57 Given that debriefings are acknowledged by others to be such a beneficial part of the procurement process, it is regrettable that both suppliers and procurement personnel are frustrated by the frequency, form and content of the debriefings now being provided.

### **Cancellation of a procurement process**

2.58 Debriefing also plays a key role in ensuring transparency when the government cancels a bid solicitation. Potential bidders may already have started to develop their bids when a solicitation is cancelled. A cancellation, without informing potential bidders of the rationale (a type of debriefing), could put into question the integrity of the procurement process.

### **The human dimension**

2.59 Procurement personnel told the OPO that debriefings can be stressful and that emotions can run high. This is understandable because the supplier no longer has an expectation of winning the contract and is now faced with the financial repercussions of the cost of preparing the bid and losing the contract. Despite their apprehension, procurement personnel consider it their obligation to provide suppliers with debriefings if requested. However, industry feedback from suppliers indicates that they may not realize they have the right to ask for debriefings and that when debriefings are conducted they are not always done to suppliers satisfaction. If a supplier does not get an adequate or timely explanation as to why its bid was unsuccessful, frustration will build and it may conclude that something is being hidden.

2.60 It is possible that publicizing the right to a debriefing may increase the demand and place greater strain on procurement personnel at a time when the resources of the procurement community are severely stretched. While we understand the challenges, especially if a face-to-face meeting is requested, we wish to emphasize that capacity issues cannot override suppliers' right to know why they were not successful and how to improve their future bids. We believe that these concerns can be addressed by departments and agencies establishing bid information disclosure standards and methodologies that create an understanding of what, when and how information is disclosed.

2.61 For the most part, the conduct of debriefings is dependent on the perspective and experience of the individual procurement personnel involved. While some debriefing training is available, specialized training is not identified as a mandatory requirement nor is it being delivered consistently on a government-wide basis. There is no evaluation done to ensure procurement personnel have the necessary skills and competencies to conduct debriefings. This means that debriefings conducted by procurement personnel that are not properly trained may increase the risk of less effective communication of important information. Inconsistent practices may lead to

inconsistent messaging which would reinforce the perception that all suppliers are not being provided information in an equal manner. This may contribute to the escalation into disagreement, confrontation and subsequent formal complaint or legal action.

2.62 In 2006, CFIB carried out research on government customer service which indicated that “poor service...will reduce a business owner’s confidence in government in general.”<sup>6</sup> CFIB concluded that “access, consistency of information and a lack of respect are key concerns of businesses” and “improved government service would save businesses time and money.”

## Conclusion

2.63 In the *Statement of Values - the Procurement Community of the Government of Canada*, published by the Treasury Board Secretariat, the government recognizes that striking the right balance amongst the sometimes-conflicting dimensions of the public interest can be a complex task. It strives to balance this complexity through an ethical decision-making approach that is collaborative and inclusive.

2.64 There is a “patchwork” of bid information disclosure norms for debriefing. Acting without clear and consistent guidance, procurement personnel can face a real dilemma. Although some guidance is available on what specific information to release, such as that provided by CIDA and PWGSC, most procurement personnel are left on their own to determine what information they can reveal in a debriefing. This can be particularly problematic for procurement personnel having to comply with the rules governing third-party confidentiality with the possibly conflicting “relevant characteristics and advantages” disclosure obligation of the trade agreements. While they may want to assist unsuccessful suppliers to improve their ability to prepare bids and increase their chances of success in future competitive processes, procurement personnel must ensure they do not disclose the intellectual property or commercially confidential information of other suppliers. Conversely, limited information feeds suppliers’ perceptions as to the unfairness of the process.

2.65 The concerns we heard over a more open approach to debriefing mirrored those voiced when the Canadian access to information laws were first introduced. Nonetheless, suppliers have a right to be clearly told why they were unsuccessful, as clarifications provided may assist them in improving future bids. Although there are administrative challenges in ensuring that suppliers’ rights to a debriefing are upheld. These challenges cannot override suppliers’ rights to receive, upon request, this information since it benefits both suppliers and the government.

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<sup>6</sup> 2005 CFIB research “Serving up Better Government – SMEs and Government Customer Service”

2.66 We believe the concerns about the strain of increased demands for debriefings on the already under resourced procurement system can be addressed by establishing government-wide bid information disclosure standards and methodologies that create an understanding of what, when and how information is to be disclosed. Once suppliers know they can readily obtain quality information on a webpage or in some similar standardized format, many are likely to consider this sufficient. This, and a standardized debriefing approach, will facilitate and ease the burden on procurement personnel.

2.67 It is reasonable to expect that government representatives will continue to feel concern if they cannot conduct debriefings in a “safe zone”, in other words until it is clear what information they can disclose and until they can do so in an environment of clear expectations, responsibilities and obligations.

2.68 There are insufficient reporting and oversight mechanisms on debriefing activities, so departments are unaware of how well debriefings work and what the impact is on the supplier community. The government is missing out on lessons learned to improve procurement practices and increase competition.

2.69 Apprehensions arising from a series of factors have contributed to widespread and deeply felt frustrations for both suppliers and the government. The cumulative effect of these constraints has added significantly to the risk-averse culture in the procurement community in the federal government and has reinforced suppliers concerns about the unfairness of the procurement process.

### **Recommendations**

2.70 The proposed recommendations are aimed at strengthening the objective of obtaining best value for Canadians and improving the relationship between suppliers and the government. To achieve this, the following action is needed by departments and agencies to set in place standards to:

#### **Inform suppliers of their right to request a debriefing and recourse mechanisms**

2.71 To ensure that suppliers are aware of their right to request a debriefing, and what a debriefing will and will not include, all departments and agencies should inform supplier’s of their right to request a debriefing. This could be done by including:

- a general notice (the overall approach of the federal government) prominently to MERX, the government’s electronic tendering service;
- a specific notice of the right to request a debriefing prominently in every bid solicitation; and
- a specific notice in any other document (such as a letter, a newspaper) used to announce a bid solicitation.

2.72 In addition, it should also be made clear to all suppliers that if they are dissatisfied with a debriefing they can submit a review request to the CITT or the OPO.

2.73 Departments and agencies should include in their individual notices information on the process that a supplier must follow to request a debriefing, including but not limited to the contact points and time constraints.

### **Develop consistent core principles**

2.74 To ensure that suppliers and procurement personnel have a clear understanding and expectations of what a debriefing will and will not include, all departments and agencies should adopt a consistent approach, to create a “safe zone” as to the information that can be disclosed as part of a debriefing. Debriefings, as a minimum, should include:

- a brief recapitulation of the bid evaluation and contract award criteria included in the call for bids;
- the name of the successful bidder;
- the contract value as awarded;
- the overall evaluation result for the successful bidder; and
- the detailed evaluation of the bid of the supplier being debriefed.

Procurement personnel should notify:

- all unsuccessful bidders, within a reasonable and specified period of time, when a contract is awarded; and
- potential suppliers, within a reasonable and specified period of time, when a call for bids is cancelled, where applicable.

2.75 Recognizing the need to establish debriefing and disclosure guidance that complies with Canada’s obligations under the trade agreements, and is workable under the *Access to Information Act* and TB policy requirements, we recommend that PWGSC, as the common service organization, should develop a standardized approach for debriefings for its own use. Once established, other departments and agencies, may wish to adapt this for their own use based on their operational needs. This approach should take into account all of the applicable legislative and policy requirements. The final framework and principles established should be scaled appropriately to larger or smaller procurements, specialty procurements or unique types of suppliers. Once established, it would be the responsibility of individual departments to operationalize and implement this approach.

### **Establish debriefing methods**

2.76 Departments and agencies should provide clear instruction on options for delivering a debriefing, such as by telephone, in writing or face-to-face, and tailor the method to the complexity and materiality of the procurement.

2.77 For low-complexity procurements, for example, the standard approach for providing information after contract award could be via written or telephone communication. Face-to-face debriefing may be offered as a second level, if the supplier wants additional information that was not provided or is otherwise not satisfied with the initial information.

### **Improve training**

2.78 Existing procurement-related training programs should be reviewed and modified by departments and agencies as required to ensure that effective training for debriefings is provided in accordance with consistent core principles.

2.79 Departments and agencies should ensure appropriate training courses are available to develop skills and competencies of the personnel involved in debriefings to help them carry out this role effectively.

All departments and agencies involved in this review have been provided an opportunity to review this report and their comments have been taken into consideration in finalizing this chapter.