



OFFICE OF THE PROCUREMENT OMBUDSMAN



CHAPTER 5

PROCUREMENT PRACTICES REVIEW

STUDY ON

METHODS OF SUPPLY

STANDING OFFERS AND SUPPLY ARRANGEMENTS

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STRENGTHENING THE CONFIDENCE OF CANADIANS IN PUBLIC PROCUREMENT

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Executive Summary

5.1 According to the Treasury Board Purchasing Activity Reports, in the last 10 years, the value of federal government procurement has increased by over 40%, while the number of transactions has decreased. The government, therefore, is managing a larger amount of procurement of increasing complexity. The government strives to increase its administrative efficiency, but has to balance these measures against its commitment to fairness, openness and transparency in procurement. Suppliers would benefit from the government's efforts to simplify and streamline procurement practices. It is in everyone's interest to reduce the burden of paperwork, time and effort.

5.2 There are two principal methods of supply that are used to streamline the procurement process for specific types of goods and services. Standing offers (SOs) and supply arrangements (SAs) are frameworks for procurement that are meant to:

- reduce the cost of common goods and services used on a government-wide basis and purchased on a repetitive basis;
- ensure that procurement processes are timely; and
- attain good value for taxpayers' dollars.

5.3 A standing offer (SO) is a continuous offer from a supplier to the government that allows departments and agencies to purchase goods or services, as requested, through the use of a call-up process incorporating the conditions and pricing of the standing offer. SOs are intended for use where the same goods or services are needed within government on a recurring basis and are commercially available.

5.4 With the use of SOs, suppliers that meet the evaluation criteria and selection methods are pre-qualified and issued an SO. An SO is not a contractual commitment by either the government or the supplier. When goods and services available through an SO are needed, departments issue a call-up, the supplier's acceptance of which constitutes a contract. The call-up is done relatively quickly. Departments do not conduct a competitive bid solicitation for the goods and services procured under an SO.

5.5 A supply arrangement (SA) serves a purpose similar to that of an SO. An SA is a non-binding arrangement between the government and a pre-qualified supplier that allows departments and agencies to award contracts and solicit bids from a pool of pre-qualified suppliers for specific requirements within the scope of the SA. Departments meet their specific needs by issuing another call for bids – a subsequent, second-stage solicitation – to one, some or all of the suppliers on the SA list, depending on the details in the SA.

5.6 With SOs, the terms and conditions, including price, are set as part of the bidding process. But when calls for bids under the SA are issued to listed suppliers, those suppliers have the opportunity to include changes in their bids to reflect market

changes, innovation, new technology or pricing adjustments. This is beneficial to both the supplier and the government.

5.7 The major similarities and differences between an SO and an SA are described in the following table:

Table 1: Comparison of SOs and SAs

Standing Offer	Supply Arrangement
STAGE 1	
Is not a contract	
Is an “offer” from a qualified supplier	Is a “non-binding arrangement”
To supply goods and/or provide services	
Required on a regular or recurring basis by one or more departments	
But actual demand is not known in advance	
For standardized goods/services the requirements of which can be defined at the outset	For goods/services not fully definable at the outset
Pricing basis can be defined and established at Stage 1	Pricing basis cannot be completely defined at Stage 1 and is established only at Stage 2
In accordance with agreed terms and conditions	
Based on an anticipated business volume that is an approximation given in good faith	
And does not constitute a commitment for work	
SO for specific goods/services may be issued to one or more suppliers	SA for a range of goods/services may be issued to a number of pre-qualified suppliers
Usually resulting from competitive solicitation but can be directed to one supplier for its full range of catalogue goods or services	Resulting from a competitive solicitation
STAGE 2	
A contract is formed when <ul style="list-style-type: none"> • A department accepts the existing offer as outlined in the SO, usually by issuing a call-up against the SO 	A contract is formed when <ul style="list-style-type: none"> • A bid in the second-stage bid solicitation is accepted by the department or agency
No second-stage bid competition – Selection of one supplier based on allocation of work stipulated in the SO agreement, e.g. right of first refusal, proportional basis, exclusive rights	Usually competitive amongst pre-qualified suppliers but can also be directed to one supplier based on allocation of work stipulated in the SA, e.g. to a specific number of suppliers based on dollar value, rotational basis

5.8 Most SOs and SAs are put in place by Public Works and Government Services Canada (PWGSC). The department acts as a common service organization and the government's main contracting arm. In 2005, the government made a significant change in the use of SOs and SAs. It became mandatory for all departments to buy certain high volume goods and services through SOs and SAs managed by PWGSC.

5.9 The government said that these measures to streamline and consolidate procurement would ensure that the federal government better pursues opportunities to reduce the cost of its purchases, by using the size of the federal government to get the best possible price.

5.10 Conceptually, the idea has merit. In theory, these tools should reduce paperwork, speed up the procurement process and lower the cost of goods and services. As with any new initiative, it has to be subject to a quality management system, where the impact and effectiveness of the implementation is monitored and its performance assessed against anticipated results. Gaps need to be identified, decisions made and actions taken to improve the process.

5.11 To date, the emphasis has been on the design and implementation of individual SOs and SAs; the monitoring, quality assurance and corresponding adjustments regime is still under development according to the PWGSC Commodity Management Framework Plan.

5.12 Last year the Office of the Procurement Ombudsman reported that the use of mandatory SOs had an impact on small and medium enterprises in doing business with the government. There is open competition when PWGSC solicits bids to become a qualified supplier. But competition is limited after that. Unsuccessful bidders and new entrants to public procurement are essentially "out" until the existing SO is renewed or refreshed. In some cases, the outcome of a solicitation may result in fewer successful suppliers. The Office also reported that the government's evaluation and reporting systems were inadequate to measure whether the use of mandatory SOs and SAs had met the government's original objectives in mandating the use of these procurement instruments. PWGSC reports that there are a number of informal means through which Commodity Management Teams and Commodity Managers gather business intelligence for use in the decision making process.

5.13 However, a recent PWGSC Internal Audit Report found that without a coordinated departmental approach and collaboration by all stakeholders, the impact of standing offers as a beneficial method of supply remains unknown. The lack of integrated and meaningful information on standing offers, and a mechanism to share this information, means that it cannot be used to support planning, decision making and action, or demonstrate the achievement of the government's shared objective of buying smarter, faster and at a reduced cost.

5.14 This year the OPO further studied unresolved concerns about the impact of mandatory SOs and SAs. The Office examined the federal legislative, regulatory and policy framework related to SOs and SAs. We conducted interviews with departmental management and procurement personnel, as well as experts in public procurement in

Canada and other jurisdictions. Finally, suppliers and a supplier association were interviewed.

5.15 Feedback from both departments and the supplier community identified advantages and concerns related to the use of mandatory SOs and SAs. The advantages, where SOs and SAs are properly designed and implemented, are presented in Table 2. There are also concerns, identified by departments and suppliers, which are listed in Table 3.

Table 2: Advantages of SOs and SAs

- Procurement is faster and less complex if suppliers have been pre-qualified.
- Because standard terms and conditions have been previously agreed to, there is less risk and complexity for both the government and the supplier.
- When a department has a requirement that can be procured via a call-up, then it does not have to carry out a full competition, and time, effort, and resources are reduced.
- Suppliers benefit if they are pre-qualified for SOs. Having competed once to obtain an SO, they can generate business without the need to compete again to meet individual government requirements.
- There is more flexibility in the SAs than in SOs as the government can add customized technical requirements and suppliers can adjust prices and offer innovation or the latest technology. Both the government and suppliers therefore benefit from dynamic competition.

Table 3: Client Departments and Supplier Concerns About Mandatory SOs and SAs¹

- In some cases, several different procurement vehicles are in place for the purchase of the same good or service. This added complexity leads to confusion among suppliers and departments.
- PWGSC has had limited success in retaining the industry knowledge and expertise required to successfully manage commodities.
- PWGSC's rationale for reducing certain contract and call-up limits from TB approved levels is not always clear to departments.
- PWGSC's reasons for determining how contractors will be selected at the second stage (right of first refusal, proportional, lowest cost, etc.) are often not readily understood.

Note 1: PWGSC states that it takes note of the above concerns and has already initiated a number of measures to address these issues.

5.16 The most efficient and fair procurement tool varies from one commodity to another. An SO may be an effective and efficient procurement tool for the purchase of one type of commodity, but not for the purchase of another. Generally SOs are more suitable for the purchase of goods than services.

5.17 To date, the government's monitoring and evaluation of the mandatory use of SOs and SAs have been limited, using a transactional basis rather than a strategic perspective.

5.18 The mandatory use of certain standing offers and supply arrangements five years ago was an important initiative in the government's ongoing efforts to ensure that its procurement is efficient and effective, represents value for money, and meets operational requirements and program delivery objectives. Since that time, the government has expended significant effort in the design of mandatory procurement tools and in implementing the policy decision. To date, the government has not collected reliable data that would enable it to undertake an assessment of the impact of this policy shift. We note, however, that PWGSC is refocusing the practice of commodity management to deliver more strategic procurement approaches and more standardized and simplified processes and tools.

5.19 The ongoing challenge is the need to ensure that the momentum to improve is maintained while ensuring that the balance between efficiency and suppliers' right to federal procurement opportunities is not sacrificed.

Introduction

Purpose

5.20 Our purpose is to contribute to improving the fairness, openness and transparency of the procurement process by increasing supplier understanding of standing offers and supply arrangements, to draw attention to areas of concern with both approaches and to highlight their advantages. The objective is to stimulate discussion regarding the evolution of these methods of supply.

Description

5.21 A standing offer is an offer from a supplier to provide well-defined, readily available goods or services, as and when requested, at prearranged prices or on a prearranged pricing basis, which can be established at the outset, under set terms and conditions, and for a specific period of time.

5.22 An SO method of supply can be considered when one or more departments repeatedly order(s) the same range of goods, services, or both, the actual demand is not known in advance, and there is a benefit to obtaining prearranged pricing and set terms and conditions.

5.23 An SO is not a contract. A separate contract is formed each time a call-up against the SO is made by the government. Since it is not a contract, “winning” an SO does not provide guarantees of business to a supplier. It does provide the SO holders with an opportunity to provide goods and services to the federal government in a more streamlined and efficient environment.

5.24 When departments have a specific requirement, they do not have to carry out a full procurement process (development of a detailed statement of the requirement, bid evaluation criteria, evaluation of bids, etc.) with its cost and time line implications. As long as the goods or services are available through an SO, departments can define details (such as quantity of goods, delivery date and delivery point) and issue a contract (call-up) through a predetermined allocation process established in the SO.

5.25 An SO may be directed on a non-competitive basis to one supplier for its full range of catalogue goods or services. An SO may also be issued, as a result of a competitive solicitation, to a number of suppliers for the same good or service, in accordance with the bid evaluation and selection methodology.

5.26 A supply arrangement is similar to an SO to a certain extent. An SA is not a contract, and it does not constitute an offer. An SA is a non-binding arrangement between the government and a pre-qualified supplier that allows departments to solicit bids and award contracts from a pool of pre-qualified suppliers for a specific requirement within the scope of the SA. In other words, an SA functions like a source list of qualified suppliers for a range of goods and services.

5.27 An SA method of supply can be considered when one or more departments order(s) on a regular basis the same range of goods, services, or both, but these goods and services cannot be adequately defined at the outset and may be subject to various methods and bases of payment, and the actual demand is not known in advance.

5.28 The same as an SO, since an SA is not a contract, “winning” an SA also does not guarantee any level of business to a supplier. When departments have a specific requirement, they issue an individual solicitation to one, some or all of the suppliers on the list, as per the selection methodology predetermined in the SA. A contract is formed when the government accepts the proposal as a result of this second-stage bid solicitation.

5.29 Both of these methods of supply, SOs and SAs, are agreements that permit departments to obtain common goods and services that they repeatedly purchase in a manner that is more efficient in terms of time, cost and resources.

Background

5.30 Standing offers have existed since the early 1960s and were developed to reduce the number of solicitations and contract negotiations for repetitively ordered goods and services, and in those situations where actual demand is not known in advance.

5.31 Other than the commodities mandated by TB to be procured through a PWGSC SO or SA, any department with contracting approval authority has the ability to create its own SOs and SAs. In practice, PWGSC puts in place the vast majority of all SOs and SAs for use by the government. As a result, PWGSC determines the amount of contracting approval authority departments can exercise in issuing call-ups for goods and services under those agreements.

5.32 In Budget 2005, however, the government announced measures to streamline and consolidate procurement to make it more efficient. It stated that these measures would “ensure that the federal government better pursues opportunities to reduce the cost of its purchases, by using the size of the federal government to get the best possible price.”

5.33 To achieve this goal, it became mandatory for all government departments to buy certain common goods and services – identified in the TB Contracting Policy and the TB Common Services Policy – using SOs and SAs put in place by PWGSC, as a common service organization and the government’s main contracting arm.

Table 4: Appendix C, Schedule 4, TB Contracting Policy
Commodities for Which Standing Offers Are Mandatory

Information Processing and Related Telecom Services (D)
Professional, Administrative and Management Support Services (R)
Ground Effect Vehicles, Motor Vehicles, Trailers, and Cycles (N23)
Telecommunications Equipment and Accessories (N58)
General Purpose Automatic Data Processing Equipment (including Firmware), Software, Supplies, and Support Equipment (N70)
Furniture (N71)
Office Machines, text processing systems and visible recording equipment (N74)
Office Supplies and Devices (N75)
Clothing, Accessories and Insignia (N84)
Fuels, Lubricants, Oils and Waxes (N91)

5.34 The introduction of this mandatory requirement constituted a fundamental change in the way the government carried out its purchasing. But this change may have represented a significant impact on the fairness, openness and transparency of government procurement.

5.35 Conceptually, the idea has merit. In theory, these tools should reduce paperwork, speed up the procurement process and lower the cost of goods and services. As with any new initiative, it has to be subject to a quality management system, where the impact and effectiveness of the implementation is monitored and its performance assessed against anticipated results. Gaps need to be identified, decisions made and actions taken to improve the process.

5.36 To date, the emphasis has been on the design and implementation of individual SOs and SAs; however, the monitoring, quality assurance and corresponding adjustments regime is still under development according to the PWGSC Commodity Management Framework Plan.

5.37 As explained in our chapter entitled Mandatory Standing Offers published last year, these measures have had an impact on suppliers, especially small and medium enterprises (SMEs), in doing business directly with the government. Unsuccessful bidders and new entrants in the marketplace are essentially “out” until the requirement is re-competed or refreshed; the number of SOs issued to suppliers was reduced significantly in some cases. For example, under the new procurement approach to buy free-standing furniture, fewer suppliers qualified than under the earlier methods of supply for this commodity. This accordingly lessened the number of suppliers qualified under standing offers from 26 to 10, including Aboriginal and non-Aboriginal suppliers, making it harder for as many suppliers as previously to access the federal market.

5.38 We also reported that the government’s reporting systems are inadequate and thus management is unable to determine if making the use of certain SOs and SAs

mandatory has produced the desired results. PWGSC reports that there are a number of informal means through which Commodity Management Teams and Commodity Managers gather business intelligence for use in the decision making process.

5.39 A recent PWGSC Internal Audit report found that:

“Without a coordinated departmental approach, and collaboration by all stakeholders, the impact of standing offers as a beneficial method of supply remains unknown. The lack of integrated and meaningful information on standing offers, and a mechanism to share this information, means that it cannot be used to support planning, decision making and action, or demonstrate the achievement of the government’s shared objective of buying smarter, faster and at a reduced cost.”

Policy Context

5.40 In developing, enhancing and implementing procurement tools, procurement personnel and policy makers must refer to several pieces of legislation and policies. The legislation and policies listed below are pertinent to this study:

- Financial Administration Act (FAA)
- Department of Public Works and Government Services Act
- Trade agreements
- Treasury Board Contracting Policy
- Treasury Board Common Services Policy
- PWGSC Supply Manual (Policies and Procedures)

Why it Matters

5.41 Federal government purchasing has increased by more than 40% since 1999 to over \$16 billion in 2008, the latest period for which statistics are available. The government has been looking for approaches to increase its efficiency and productivity.

5.42 Furthermore, the complexity of procurement has increased over time. The procurement environment is more legalistic resulting in the development of more policies and procedures over and above the national and international trade rules. Buying at the lowest compliant cost is not necessarily the only option available; the concept of “best value” introduces more complicated evaluation criteria and selection methods.

5.43 In an effort to improve efficiency, new procurement tools have been implemented using information technology such as Professional Services Online and Temporary Help Services. New procurement approaches, such as Task-Based Informatics Professional Services (TBIPS) and Solutions-Based Informatics Professional Services (SBIPS), were developed to procure informatics professional services. PWGSC continued to develop

procurement tools, e.g. Solutions-Based Professional Services (SBPS) and Task-Based Professional Services (TBPS), which required enhancements to existing SO and SA methods of supply. All of these were introduced to better serve clients, to meet evolving and complex business needs, to further government priorities and to implement renewed management policies. These tools and approaches aim to facilitate the procurement process, but have also transformed how the government carries out procurement.

5.44 The latest call-up data relates to calendar year 2007 and shows that the total volume of business through call-ups against SOs amounted to approximately \$1.5 billion. While no contract detail is available, we would expect a similar business volume, if not more, for SAs. Therefore, the total business volume using these methods of supply would likely represent a significant portion of the annual federal government purchasing activity, which averages about \$14 billion annually.

5.45 Since the introduction of the mandatory use of SOs and SAs for certain common goods and services in 2005, some suppliers and departments have voiced concerns over the effectiveness and efficiency of these methods of supply. It is important to continue studying the impact of these changes on the fairness, openness and transparency of the procurement process.

Approach

5.46 We examined the federal legislative, regulatory and policy framework related to standing offers and supply arrangements. We relied on extensive information and analysis we already have as a result of our previous review. We conducted interviews with departmental management and procurement personnel, as well as experts in public procurement in Canada and other jurisdictions. Finally, we conducted interviews with suppliers and a supplier association.

5.47 We did not perform any file reviews of individual standing offers or supply arrangements, as the purpose of this study was not to comment on individual standing offers or supply arrangements but to stimulate discussion regarding the evolution of these methods of supply.

Observations

5.48 While we have had some positive feedback from suppliers and procurement personnel, we have also heard some negative reaction to the use of mandatory standing offers and supply arrangements. Generally the consensus was that these methods of supply were necessary in meeting the government's operational needs but there were a number of weaknesses that needed to be addressed.

5.49 Several departments informed us that they like SOs and SAs – SOs are faster, SAs are more flexible. For example, one emphasized that SOs are an important vehicle to do business and the staff see SOs as good tools that help them work faster. They stated that the companies are listed, with what they offer, so there is no need to spend

time researching and added that if they had carte blanche to develop a complete procurement system, they would definitely continue with the SO approach. Another department indicated that the ease of use cuts out a lot of work and added that SAs are also good since suppliers pre-qualify and there is still competition for pricing. The department further stated that the SA approach permitted timely actions, allowed flexibility for each statement of work and it weeded out suppliers not qualified or competent to do the required work.

5.50 In response to our Annual Report of last year, which included a chapter on mandatory standing offers, a partner of a professional services firm described the SO for strategic communications and writing services for which his firm qualified as being “ably administered by PWGSC which can only be described as ruthlessly fair.” He indicated that by giving an opportunity on a rotational basis to the qualifying firms “favouritism, cronyism and other unfair practices are avoided, the Canadian people receive quality services at a fair price and qualified firms are treated equitably.”

5.51 On the other hand, several suppliers of human resources services feel that there are problems in the evaluation methodology in use. They feel that the lowest cost is a poor determinant of best value for consulting services where personal suitability and intellectual content is important.

5.52 In addition, some suppliers have commented on the inappropriateness of the process that includes the right of first refusal in an SO. Others have described the SA process as being very labour-intensive and costly because suppliers have to continuously compete for business.

5.53 Some departments have echoed some of the same concerns. With respect to the first right of refusal, one department told us that they have to go to the first-ranked company, which can sub-contract the work to anyone it wants. It also said that it is terrible for all other ranked suppliers, they do not get the opportunity to quote but they might have a better proposal and could have offered better resources who might work faster and could get better value for money. Another department told us that the huge variety of rules for SOs made it difficult to react quickly to a client requirement and to develop the necessary expertise. As a result, managing risk and providing timely and accurate advice have become more difficult. With respect to flexibility to add innovation, a department said that if you try to buy something new on the market it will be at least a couple of years before there is a vehicle to do so by which time the new is no longer innovative or cutting edge.

5.54 These diverse comments are indicative of the highly complex environment of government procurement, particularly when dealing with a multitude of commodities and over 100 departments and agencies with different operational needs. It is critical, therefore, that stakeholders understand the differences between both methods of supply – the SO and the SA – and when and how to use them. Developers of these tools must also recognize their impact on both the market and the users when they are improperly designed and implemented.

Advantages of SOs and SAs

5.55 If properly designed and implemented, both approaches, SOs and SAs as previously described, should offer important advantages over stand-alone contracts:

- It is faster and less complex to select qualified suppliers if the right qualifications have already been evaluated at the first stage.
- Suppliers qualified under an SO or an SA have enhanced opportunity to receive contracts.
- All the standard terms and conditions have been previously agreed to – less risky and less complex for the government and the supplier.

5.56 SOs have the following additional advantages:

- When departments have a specific requirement, they do not have to carry out a full competition with its attendant cost and time line implications. As long as the good or service they need is available through an SO, all they have to do is issue the call-up.
- Successful suppliers also derive benefits. Having competed once to obtain an SO, they can then generate business usually without the requirement to compete again to meet individual government requirements.

5.57 SAs have the following additional advantages:

- While the terms and conditions (including price) of SOs are often static, when a solicitation is issued at the second stage, departments can add customized technical requirements, as long as they are within the scope of the SA.
- Qualified suppliers on an SA list have the opportunity to include in their bids recent changes to the marketplace such as innovations, latest technology and pricing adjustments. This is where the government can reap the real benefits of dynamic competition.

Concerns with SOs and SAs

5.58 It is critical for departments and agencies to ensure that they use the right procurement tool in the right manner and for the right purpose. It is also imperative that the tools be designed in a manner that facilitates this.

5.59 Listed below are a number of points that were identified in the course of our study and that merit consideration in the development of procurement strategies for standing offers and supply arrangements.

Design of SOs and SAs – First stage

Dealing with qualified suppliers

5.60 The government has the obligation to ensure that it deals with suppliers that have demonstrated that they have the technical, managerial and financial capacity to meet the contract requirements as defined in the solicitation documents. In the solicitation process for a stand-alone contract, this capacity is evaluated and confirmed for each contract requirement. However, for SOs and SAs where the exact contract requirements are established only at the call-up stage, a supplier is pre-qualified using a more generic qualification standard.

5.61 The risk increases when moving from qualifying suppliers for a specific and more defined requirement to qualifying suppliers for a generalized and less defined procurement tool. If the qualifications are too generalized, marginally qualified suppliers may be successful in securing an SO or being listed on an SA. The risk is higher when the use of the procurement tool is mandatory.

5.62 Between the two tools, the risk is greater for SOs because for the most part, the call-up is directed to only one supplier. The risk is reduced for SAs because it provides for a competitive process at the second stage.

Complexity impacts on suppliers and government

5.63 There are many different procurement tools available for acquiring the same goods or services. For example, business-related professional services may be acquired through the In-Service Support Supply Arrangement, Professional Services Online, Temporary Help Services, SBPS and TBPS, as well as a variety of specialized SOs and SAs for specific business-related professional services. This variety increases the complexity of acquiring a service and the risk that the differences between them are not well understood.

5.64 In order to help departments select the right tool, PWGSC has done significant work to differentiate between the various methods of supply, for example, by posting information on the Web and using the Client Advisory Board to improve communication in various areas, including information on the methods of supply. GCPEDIA is also being used to promulgate information on methods of supply, as are presentations to clients via the Canadian Institute for Procurement and Materiel Management. Furthermore, PWGSC has a help desk for certain well-used methods of supply such as THS to further assist clients and differentiate between tools. The significant effort that PWGSC has put into explaining their tools is an indication of the complexity facing client departments in making the right choices.

5.65 The suppliers are also confused by the variety and complexity of tools that they have to qualify for. For example, in seeking to meet the government's needs for a variety of professional services, PWGSC issued, in 2009, three separate calls for bids for professional services: one SO and two SAs. Suppliers, which would have had to expend about \$5,000 each (an amount that would be significant to small suppliers) to

respond to the number of similar requests for standing offer or supply arrangements may have been dissuaded from bidding owing to the costs of preparing multiple submissions.

5.66 A supplier interested in bidding on all three had to go through more than 200 pages of bid documents, and even that would not have been sufficient: the SO call alone resulted in more than 300 questions from suppliers, resulting in at least 27 formal amendments and extensions of the bid closing periods by two months. As noted in the questions from suppliers, this was particularly onerous for small suppliers. We were told by some suppliers that the actual challenge was to understand the content and impact of the bidding documents and then adjust frequently to the amendments.

5.67 The services included in the above documents looked similar, and many of the interested suppliers were the same: perhaps most importantly, the qualification criteria were similar. If a supplier were bidding on all three solicitations, it had to devote significant effort in trying to track the many and varied amendments.

5.68 It would seem less demanding on and potentially less confusing for suppliers if the government had streamlined its process to issue one call to create a list of qualified suppliers that could be used in several different ways. This streamlining in itself would have reduced the government's workload in the evaluation process and would have improved access for suppliers by making it easier for them to bid.

The need for commodity expertise

5.69 Government procurement personnel, particularly those responsible for creating and managing SOs and SAs, need to understand all relevant dimensions on which their decisions have an impact: what potential users actually need and why; what goods and services are available; how the relevant supplier market functions; and how these factors can best be brought together to create an environment that is fair, open and transparent. This requires a combination of recruiting based on industry expertise, specific training and continuous knowledge updating through such methods as conference and trade show attendance.

5.70 Many procurement personnel and suppliers indicated to us that PWGSC, which establishes government-wide methods of supply, has had limited success in retaining the specialized knowledge of successfully managing commodities.

5.71 Although departments are involved in the process of developing SOs and SAs, one department told us they are puzzled as to why their procurement experts – who know their departmental operational circumstances – are not given a greater role and responsibility for input into this process. PWGSC, however, maintains that with the development of all new procurement tools, they put in enormous effort in reaching out to departments by setting up commodity teams, including them in advisory committees and having a designated organization, Client Engagement that keeps departments informed and ensures that their concerns are addressed. This difference of opinion suggests that communication and coordination between departments needs to be strengthened.

5.72 The proposed PWGSC Commodity Management Framework states that the commodity teams that will be formed may include representatives of Green Procurement, the Office of Small and Medium Enterprises, high volume spend departments for the specific commodity and possibly selected representatives of small and medium departments. Analysts and consultants with technical, legal, financial, policy and socio-economic program expertise, in addition to industry association representatives, will support the commodity teams.

Unclear contracting authority

5.73 Departments have the authority to enter into contracts in accordance with limits specified in the Treasury Board Contracts Directive of the TB Contracting Policy. Table 5 below details some of the basic contracting limits for goods, services and construction.

Table 5: Basic Contracting Limits for Goods, Services and Construction			
Contracting authorities	Electronic competitive	Traditional competitive ¹	Non-competitive
<i>Goods²</i>			
- PWGSC	\$40,000,000	\$10,000,000	\$2,000,000
- Departments	(subject to delegation from PWGSC)	(subject to delegation from PWGSC)	(subject to delegation from PWGSC)
<i>Services</i>			
- PWGSC	\$20,000,000	\$10,000,000	\$3,000,000
- Departments	\$ 2,000,000	\$ 400,000	\$ 100,000
<i>Construction</i>			
- PWGSC ³	\$40,000,000	\$20,000,000	\$1,000,000
- Departments	\$ 400,000	\$ 400,000	\$ 40,000

Note 1: Bids solicited from at least two suppliers without electronic publication.

Note 2: Goods – The authority of ministers to contract is subject to delegation from the Minister of Public Works and Government Services (see the section in the Department of Public Works and Government Services Act).

Note 3: Construction – After March 31, 2011, the limits for Public Works and Government Services Canada revert to the limits before April 1, 2009: Electronic bidding: \$20,000,000; Traditional competitive: \$10,000,000; Non-competitive: \$500,000.

5.74 As shown in Table 5 above, most departments have up to \$2M contracting approval authority for services advertised on the Government Electronic Tendering Service, which is currently supplied through MERX™, \$400K for traditional competitive

and \$100K for non-competitive (directed contract to one supplier). The government uses the different limits for contracting approval authorities as a risk mitigation strategy.

5.75 In using SOs and SAs, departmental authorities are sometimes further limited by call-up or call-for-bids limitations imposed by PWGSC. Departments and suppliers have questioned why, in using a method of supply put in place by PWGSC, departments can be limited to contracts of lower value than when they do their own contracting.

5.76 PWGSC indicated that it has the flexibility to establish the call-up limit, which is set based on risk, trade agreement thresholds, client and industry consultation and other factors related to an understanding of the commodity. We note that notwithstanding the fact that many of these call-ups are considered competitive, PWGSC has in some cases established limits based on the non-competitive threshold.

5.77 We also noted inconsistencies in the interpretation of the trade agreements in relation to supply arrangements and standing offers. Some departments, when putting in place their own departmental SA, under their delegated authority, told us that they believed that the determination of whether or not a trade agreement was applicable was to be based on the estimated aggregate value of the SA. PWGSC, on the other hand, as stated in the Supply Manual, believes that determination of the applicability of a trade agreement is to be based on the value of the contract issued at the second stage under the SA.

Emerging issues

5.78 The procurement regime may not have kept up to date with the accountability changes in the Financial Administration Act (FAA). In keeping with the “accounting officer” concept in the FAA, departments are responsible and accountable for “delivering the results that they commit to achieving with the resources they have been allocated and meeting the management expectations.” In other words, departments are supposed to be responsible and accountable – not PWGSC – for determining that the procurement expenditure has achieved best value.

5.79 To date, no study has been undertaken to ensure that the concept of mandatory SOs and SAs is fully supportive of the intention of the above changes.

Call-up (contract) against an SO or SA – Second stage

Selection process

5.80 The selection process at the second stage represents an important step in the procurement strategy. To have the ability to confirm fairness, openness and transparency, there has to be a way for the government to monitor and ensure that the implementation of the approach and the allocation of work have been done as stipulated in these tools. This will also allow the government to measure the efficiency and effectiveness of the approach and take appropriate corrective measures, if necessary.

5.81 Below are issues identified when implementing the second-stage process.

SOs – Right of first refusal

5.82 Many SOs rank suppliers and require that call-ups be offered first to the highest-ranked supplier; only if that supplier refuses the work will the offer pass to the second-ranked. A supplier may succeed in getting listed but never get any work because the higher-ranked suppliers have the capacity to do all required work. There is a cost to lower-ranked suppliers to maintain capacity and capability.

5.83 Right of first refusal becomes more significant when one or more of the top-ranked suppliers has/have the ability to expand available resources in order to accept call-ups. Such a supplier may be known as a “broker” or a “body shop”: when it receives a call-up, it may have few or no immediate resources but can search the marketplace to see if it can find a subcontractor that can do the work. To the extent that the broker is successful, the number of call-ups that may be available to lower-ranked suppliers decreases.

5.84 Logically then, if one supplier has the ability to tie up all the available work under an SO, this approach can also result in the creation of a monopoly-like situation. If all call-ups go to one supplier, that supplier may grow to assume a dominant place in the market, reducing the likelihood of future effective competition and resulting in increased costs to the government over time.

5.85 In such a case, the original call for bids might, in theory, have been fair and open, but turns out to be unfair because lower-ranked suppliers really have no or, at best, limited access to business. The situation is then a paradox – there is a fair and open process for a supplier to get on the pre-qualified list – but once on that list, there is diminished access to actual contracts.

SOs – Proportional basis

5.86 Work is distributed on a proportional basis to suppliers, e.g. 50% to the first-ranked, 35% to the second, 15% to the third. The predetermined distribution of the resulting work is described in the initial solicitation so that potential suppliers are aware of these when preparing their offer.

5.87 The PWGSC Supply Manual indicates that this distribution of work is known as “collective best value.” A clear advantage in terms of distribution of expected business volume is given to the supplier having the highest-ranked SO as it represents the best value.

5.88 When this method is used, it is questionable whether the government can state that it has selected the “best value” for an individual contract issued to a supplier other than the first-ranked supplier.

5.89 Since to be considered competitive a bid must be the lowest bid or the bid that offered the best value, it is also not clear which contracting approval authority would apply – electronic bidding, traditional competitive, or non-competitive contracting authorities – to those call-ups.

SAs – How is the number of pre-qualified suppliers on a list determined?

5.90 Ensuring access to contract opportunities for the supplier community argues in favour of SO/SA lists with many named suppliers, each having the opportunity to win contracts. However, dealing fairly with a lengthy list of suppliers poses difficulties.

5.91 With respect to SAs, inviting perhaps hundreds of suppliers to bid may be impractical: for suppliers, which are likely to be reluctant to invest the cost in bidding against so many possible opponents; and for government, which could incur the time and expense of having to evaluate hundreds of bids. Conversely, limiting the SA list to fewer suppliers so that resulting calls for bids can be handled more efficiently by both sides could be seen as limiting access.

5.92 Achieving an appropriate middle ground, so that there is a “win-win” solution for buyers and sellers, is a delicate balancing act. PWGSC strives to find this balance on an ongoing basis. Consistent reporting and monitoring would go a long way to verifying if this balance has been achieved in any particular procurement tool.

SAs – Impact of bidding twice

5.93 One supplier has informed us that the cost of responding to these solicitations is huge, and it is very frustrating and expensive – not just for [suppliers] but also for the government – to have to continuously compete for business when a valid procurement tool already exists. Others have the same view.

5.94 In order to take advantage of an SA, the second-stage solicitation should be simple, fast and not costly to the industry; otherwise, the value added of using this method of supply would be questioned.

The right approach for the right reason

5.95 The SO may be the best approach for commercially available goods and services in common use across government. Many services are very similar to goods – commercially available from multiple suppliers and capable of being divided into standardized categories and priced on a unit-of-work basis.

5.96 When the call-up is made, the total cost is known since the two variables that make up the cost (unit price and quantity) are known. Since the quantity is the same for all suppliers, it is easy to determine which supplier offers best value.

5.97 However, SOs are now in place for more complex requirements that require the development and issue of a statement of work and assessment and evaluation criteria against which an SO holder submits a proposal including proposed resources, time lines for work completion, and calculations of the likely total cost based on level of effort. When the SO holder has to develop a proposal, and the government has the obligation to evaluate that proposal, the SO is being managed as an SA but with only one supplier. This starts to look like a directed contract, compromising the fairness and openness offered by the original solicitation for the standing offer.

Use of daily or hourly rates

5.98 In the case of services, only one variable is known (daily or hourly rates). The level of effort is not known and can easily vary by supplier. As a result, generally when an SO for services is used, unless the level of effort is known in advance, the cost is not known and it may not be possible to determine which offers the best value.

5.99 For example, a department has a requirement to paint an office boardroom. Painter 1 offers a rate of \$20/hour while Painter 2 is \$25/hour. Individual suppliers may calculate the level of effort differently – Painter 2 may propose four hours, whereas Painter 1 may propose six hours. Even though Painter 1 has a lower hourly rate, once multiplied by six hours, it ends up being more expensive. Consequently, at the second stage, the supplier with the lowest rate does not necessarily represent best value to the government.

Misuse of instruments

5.100 Departments may misuse the convenience of the SO approach to acquire goods or services that are not officially part of the SO's identified goods and services. For example, suppliers may have been qualified to supply furniture, including some types of paneling, through an SO. A department orders moveable wall panels from one of the suppliers on the SO list that can supply the desired panels, but which were not part of the initial competition.

5.101 The more the supplier has to customize the goods or services it originally offered, the more the risk increases that the government is moving away from the original requirement on which competition was based. This compromises fairness, openness and transparency as other potential suppliers of this customized good or service are not made aware of this opportunity and cannot bid.

5.102 With regard to services, departments have a wide choice of procurement approaches to use. Our concern is that in the process of selecting the approach to be used, an unfair decision may be reached.

5.103 To illustrate this, we start with a situation in which a new project has been assigned to a manager – with a short time line – and is not expected to be repeated. Resources are not available internally; therefore, outside resources must be brought in through a contract. There is a mandatory standing offer in place for professional services in the relevant field of expertise. There is also a mandatory standing offer in place for temporary help services, which includes the appropriate professional services. The situation fits the definition for the use of temporary help – it is a temporary increase in workload.

5.104 The question then becomes which of the two “mandatory” approaches should be used? In either case, the risk is that the decision will be seen as not being transparent, being unfair and limiting access to the suppliers on the other SO list, which will not know that the opportunity exists and may claim that they were unfairly excluded even after having become an SO holder. There is also a risk to the department that by using the inappropriate tool, although this may have been done inadvertently, it may give the

perception that the decision was made purposely to contract with the supplier it prefers on that particular qualified supplier list.

Extensions

5.105 Extensions to SO and SA validity periods, not advertised in the original call for bids, prolong the exclusion of suppliers not on the list. Suppliers find it hard to accept that they should be penalized because delays were encountered in finalizing a replacement approach, insufficient resources were allocated to the renewal/redesign or management/oversight/approval processes did not give the file sufficient priority. Also, the resources required to seek approval for an unplanned extension are taken away from the development of a new/replacement mechanism, thereby delaying even further that replacement.

Conclusion

5.106 It has been five years since the government introduced the mandatory use of SOs and SAs for certain goods and services. These two methods of supply are also widely used to procure non-mandatory goods and services.

5.107 This study highlights obvious advantages of using standing offers and supply arrangements but has also identified several areas of concern.

5.108 Five years after implementation, the government has not assessed the impact of the mandatory use of SOs and SAs on the efficiency as well as the fairness, openness and transparency of the procurement process.

5.109 There is increasing pressure on the government to carry out procurement more effectively and efficiently while ensuring the integrity of the process. PWGSC is refocusing the practice of commodity management to deliver more strategic procurement approaches and more standardized and simplified processes and tools.

5.110 This work is currently under way, and it is too early to assess the full impact of this initiative on the concerns identified in this study related to mandatory SOs and SAs. The ongoing challenge is the need to ensure that the momentum to improve is maintained while ensuring that the balance between efficiency and suppliers' right to federal procurement opportunities is not sacrificed.