Annual Report 2010-2011

Office of the Procurement Ombudsman

Office of the Procurement Ombudsman
Bureau de l'ombudsman de l'approvisionnement

Canada

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The Minister of Public Works and Government Services

Dear Minister:

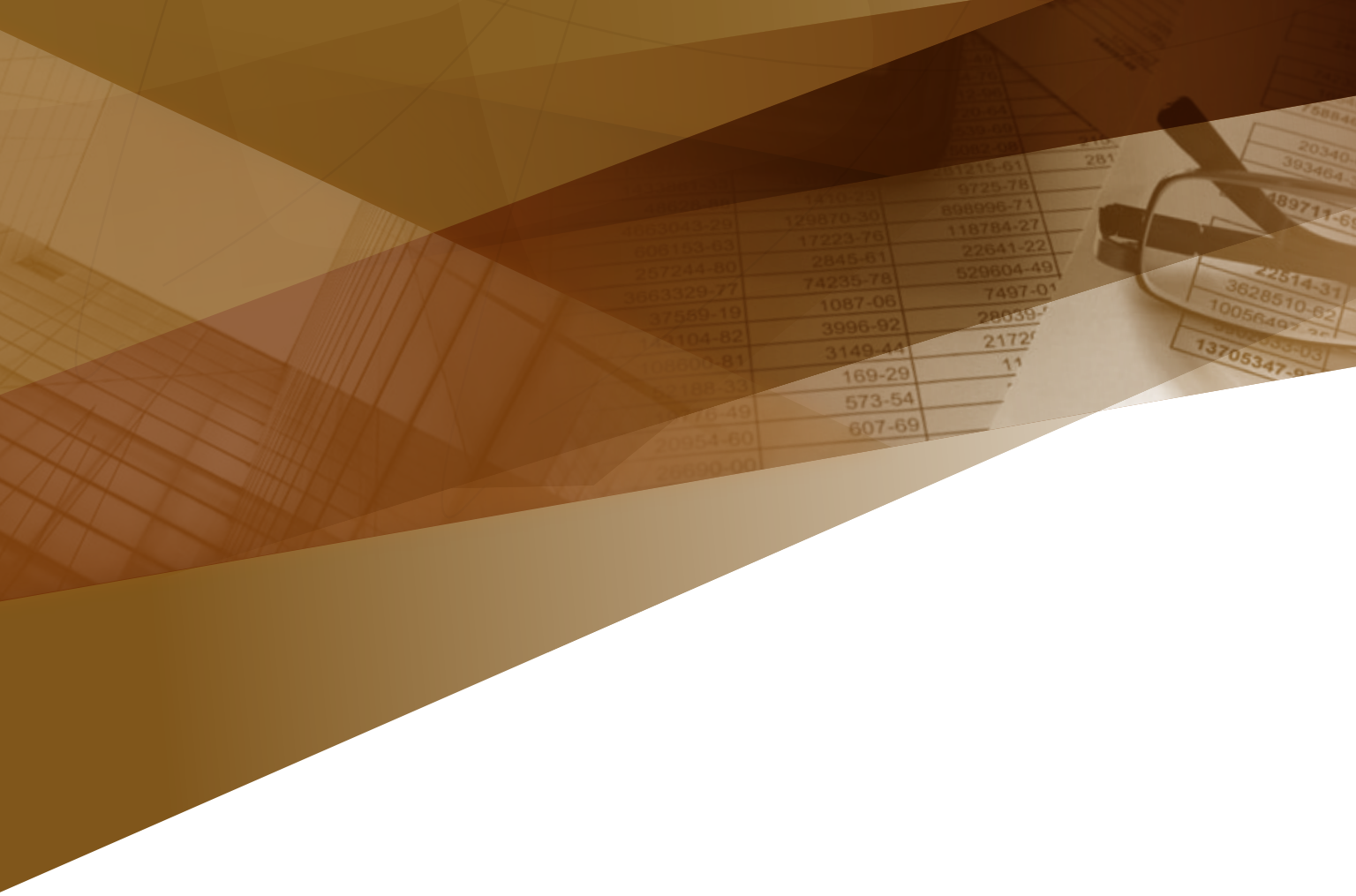
Pursuant to section 22.3(1) of the *Department of Public Works and Government Services Act*, it is an honour and a pleasure to submit the Procurement Ombudsman Annual Report for the 2010–2011 fiscal year.

Yours sincerely,

Frank Brunetta
Procurement Ombudsman
Ottawa, July 2011

Annual Report 2010-2011

Office of the Procurement Ombudsman



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Message from the Procurement Ombudsman

It is a pleasure to submit my first annual report as Procurement Ombudsman. Since being appointed in January 2011, I have benefitted from the work undertaken by my predecessor, Shahid Minto, in establishing the Office of the Procurement Ombudsman (OPO). Mr. Minto retired from the Public Service in July 2010 after a distinguished 33-year career. While assuming new responsibilities can often prove to be challenging, my transition was facilitated by Mr. Minto's ability to attract top-rate personnel and his recognized accomplishments in making the OPO mandate operational.

Following Mr. Minto's retirement, Deputy Procurement Ombudsman Oriana Trombetti was responsible for the Office until my appointment in January. Before leaving us for a promotion with the Department of Justice, she was instrumental in helping with my orientation to the Office. I would like to thank Ms. Trombetti and recognize her dedication and professionalism.

Since my arrival, two things have struck me about the Office: the quality of the people who make up the Office and their dedication to improving the federal procurement system. The motto "we are here to help" is deeply ingrained in the Office's culture. This motto is evident in all aspects of our everyday work, be it in the respect and dignity afforded all callers to our toll-free line (regardless of whether their call is related to procurement or not), in the vigour and determination of our investigations, in the genuine interest displayed while facilitating the resolution of contractual disputes between suppliers and government officials, or in the discipline and thoroughness exhibited in procurement practices reviews and studies. The Office is made up of quality people who believe that what they are doing makes a difference to the fairness, openness and transparency of federal procurement and, ultimately, to the Canadian taxpayer. I am proud to have been chosen to lead this valued and trusted organization.

Since my appointment as Procurement Ombudsman, I have been asked to describe the procurement concerns most often reported to the Office. Given the fact that, annually, the federal governent issues roughly 325,000 contracts and amendments valued at approximately $20 billion, it is clear that federal procurement has evolved from a purely clerical function to one that is critical to departments and agencies by assisting them in delivering on their strategic objectives.

During the course of our work, the Office has noted a trend toward transitioning the procurement function from a "back room" transaction processing function to an enabling partner in the delivery of departments' and agencies' strategic objectives. These progressive organizations recognize timely procurement analysis and planning as an essential component of effective program delivery. To avoid issues being brought to the Office's attention—which appear to be stemming from last-minute reactive contracts—it is vital that departments and agencies transition to treating procurement as a strategic partner and enabler.

Given the fact that, annually, the federal government issues roughly 325,000 contracts and amendments valued at approximately $20 billion, it is clear that federal procurement has evolved from a purely clerical function to one that is critical to departments and agencies by assisting them in delivering on their strategic objectives.

Likewise, while significant strides have been made in professionalizing the function through training, some of the files the Office has handled suggest more is needed. This is particularly so in the training of program managers who are often responsible for

articulating the types of goods and services required in critical procurement documents such as statements of work and bidder evaluation criteria. In the procurement process, the clarity, precision and accuracy of these documents is paramount, as they influence other "downstream" procurement activities and decisions. A continued emphasis on procurement training, including the training of non-procurement personnel, is essential as the federal public service continues to experience substantial demographic change.

> **A large number of cases that come to our attention involve concerns that could have been avoided through open and clear dialogue.**

Clarity, precision and accuracy are also pre-requisites to effective communication between departments, agencies and suppliers. A large number of cases that come to our attention involve concerns that could have been avoided through open and clear dialogue. Whether the concerns stem from a department's reluctance to reveal "too much" information (in its zeal to protect the integrity of the procurement process) or from something as routine as failing to show the common courtesy we all expect by returning a telephone call, the Office hears of numerous cases which escalate due to poor interaction between the parties.

Finally, I have taken note of a concern which, as a proud public servant for the better part of three decades, strikes at the very reason for my interest in becoming Procurement Ombudsman. The Office has heard of supplier reticence to disclose the names of departments, with which they have procurement concerns, for fear of being excluded from future business opportunities. I find this issue particularly troubling. I deeply believe that the values of equity, fairness and justice are fundamental in serving Canadians. Whether this reluctance is rooted in suppliers perceptions or past experiences, this is an issue I plan to closely monitor and better understand in the upcoming months.

For my first annual report, I have two objectives in mind. The first is to report on the Office's activities, outlining our role, the nature of our work and the concerns that have come to our attention. A secondary, but equally important, objective is to provide some initial insight into how the Office will continue to build on the solid foundation established by my predecessor. Given what I have heard from stakeholders in my short time as the Ombudsman, it has become apparent that the Office can, and should, play a more prominent role in improving fairness, openness and transparency in procurement through education, facilitation and investigation. As I lead the Office through the next stage of its evolution, these three pillars will be the basis on which we will deliver our mandate:

EDUCATE—A large part of our responsibility involves helping to prevent federal procurement concerns from escalating through early intervention and the provision of relevant information. Whether it be in taking the time to explain a particular aspect of the procurement process to a frustrated stakeholder, identifying areas of concern regarding fairness, openness and transparency, or disseminating information on good procurement practices being used in federal organizations or elsewhere, our role in educating will be paramount in achieving our objectives.

> **The Office has heard of supplier reticence to disclose the names of departments, with which they have procurement concerns, for fear of being excluded from future business opportunities. I find this issue particularly troubling.**

FACILITATE—Whenever our stakeholders have concerns, we will make ourselves available to stimulate active and effective dialogue to de-escalate the situation and/or address their concern. Through work such as our reviews and studies, we will foster a greater understanding of good procurement practices and the challenges faced by both suppliers and government procurement communities.

INVESTIGATE—Given the volume and complexity of contracts awarded and administered by the federal government, it is inevitable that difficulties will occasionally arise. In such cases, if the Office's role as a facilitator has proven to be unfruitful or the nature of the concern does not lend itself to other available remedies, the Office will use recognized methods to ascertain and report the facts and, as required, make recommendations for improvement.

As the Office takes the next step toward optimal operation and delivery mode, we will be guided by a simple, clear beacon: to promote fairness, openness and transparency in federal procurement. Because when federal procurement is conducted in a fair, open and transparent manner, we all benefit.

Frank Brunetta
Procurement Ombudsman

Part I: Overview

Federal procurement can be complex, involving hundreds of thousands of transactions for a broad range of goods and services, valued at billions of dollars annually. The framework governing federal procurement comprises over 15 acts of Parliament and numerous regulations and policies. In conducting procurement activities, the government must at all times meet the highest standards of public scrutiny and demonstrate exemplary stewardship of the public resources with which it has been entrusted. Ensuring the accountability, transparency and integrity of federal procurement has been a key priority in the Government of Canada's accountability agenda. Over the years, numerous measures have been introduced to ensure that federal procurement is undertaken in an open, fair and transparent manner with due regard for economy and efficiency.

Accordingly, in April 2006, the Government introduced the *Federal Accountability Act* and its associated action plan, which included the appointment of a Procurement Ombudsman (the Ombudsman). The Office of the Procurement Ombudsman (the Office) was created through an amendment to the *Department of Public Works and Government Services Act* (the Act). The Office became fully operational in May 2008 with the passing of the *Procurement Ombudsman Regulations* (the Regulations), which provide specifics on how its authority is to be exercised. The Office's mandate and role are set out in the Act as follows:

- review the practices of departments for acquiring materiel and services to assess their fairness, openness and transparency and make any appropriate recommendations to the relevant department;
- review any complaint respecting the award of a contract for the acquisition of goods below the value of $25,000 and services below the value of $100,000 where the criteria of Canada's domestic *Agreement on Internal Trade* (AIT) would apply;

THE OFFICE OF THE PROCUREMENT OMBUDSMAN IS:

Independent—operates at arm's length from other federal organizations;

Unbiased—neither a lobbyist for suppliers nor an apologist for federal organizations;

Helpful—shares good practices and demystifies the complexities of the procurement process;

Knowledgeable—understands procurement policies, procedures, trends and good practices;

Responsive—addresses the needs of suppliers and federal procurement communities; and

Part of the solution—identifies systemic concerns and makes balanced and useful recommendations to strengthen federal procurement activities.

- review any complaint respecting the administration of a contract for the acquisition of materiel or services by a department or agency, regardless of dollar value; and
- ensure an alternative dispute resolution process is provided, upon the request of a party to a contract, should all parties to the contract agree to participate.

In addition, the Ombudsman may be directed by the Minister of Public Works and Government Services Canada (PWGSC) or the Governor in Council to perform reviews of the practices employed by departments and agencies for acquiring goods and services. In establishing this mandate, Parliament has provided the Office with the ability to act in an authoritative role, particularly with respect to complaints filed in writing by Canadian suppliers, as well as concerns arising in the procurement process.

The Ombudsman reports directly to the Minister of PWGSC and is required to submit an annual report, which the Minister tables in Parliament.

While the Office is part of the portfolio of the Minister of PWGSC, it operates at arm's length from PWGSC and other departments and agencies. To enhance the Office's independence, a memorandum of understanding was signed between the Deputy Minister of PWGSC and the Ombudsman setting out administrative arrangements and delineating specific roles and responsibilities.

QUICK FACTS

- Office was created under the *Federal Accountability Act.*
- Mandate and role are set out in the *Department of Public Works and Government Services Act*, section 22.1.
- Reports to the Minister of Public Works and Government Services.
- Operates at arm's length from federal departments and agencies.

Part II: 2010-2011 Results

Following the retirement of the inaugural ombudsman, the Office was without an ombudsman for approximately six months. During this period, the Regulations did not allow for the delegation of authority permitting new procurement practices reviews and investigations to be launched and reports released. Despite the absence of an ombudsman, the Office's daily business continued under the direction of the Deputy Procurement Ombudsman. In keeping with the business model that provides for a collegial and cooperative approach, complaints were addressed in an unbiased, timely and independent manner.

The following section provides details on OPO activities.

INQUIRIES AND COMPLAINTS

The Office was developed on a "service first" business model and is committed to offering prompt, personalized and seamless service to federal procurement stakeholders.

Our approach in fielding procurement-related complaints is prescribed by the Regulations, which provide the parameters for our activities. To ensure adherence to our legislated mandate and the Regulations, each procurement complaint is received in writing and assessed by a team of federal procurement experts and a senior commercial legal advisor. The assessments and any associated recommendations are provided to the Ombudsman for consideration and to determine whether the complaint will be reviewed. As prescribed by the Regulations, the Ombudsman is required to make a determination within 10 working days of receipt of the complaint (referred to below as the determination period).

To ensure adherence to our legislated mandate and the Regulations, each procurement complaint is received in writing and assessed by a team of federal procurement experts and a senior commercial legal advisor.

TESTIMONIAL...

A Request for Proposals clarification request went unanswered for three weeks. Once it was answered, the supplier asked for an extension of the bid closing period. The request was denied, so the supplier contacted the Office concerning inadequate time to prepare the proposal. Through the Office's intervention, it was determined that the questions and answers were improperly posted on MERX. As a result, the department agreed to an extension. The supplier wrote:

"Thank you very much. I do appreciate the prompt response from the Ombudsman Office. I am pleased with the extension and withdraw my formal complaint."

Specifically, complaints from a supplier regarding the *award* of a contract are assessed using the following prescribed criteria:

- the Complainant must be a Canadian supplier;
- the complaint must be filed in writing;
- the complaint may only be filed after the award of the contract to which the complaint relates;
- the contract in question must be under $25,000 for goods or under $100,000 for services;
- the complaint must be filed within the prescribed timelines (within 30 working days after the award of the contract became known or should have reasonably became known to the Complainant—under certain circumstances and at the Ombudsman's discretion, this period may be extended up to 90 working days);
- the department to which the complaint relates must be under the jurisdiction of the Ombudsman;
- the contract whose award is the subject of the complaint is not covered by any of the exemptions or exceptions as defined by section 2 of the AIT, including those made under articles 1802 to 1806;
- the facts and grounds on which the complaint are based are not and have not been the subject of an inquiry before the Canadian International Trade Tribunal or a proceeding in a court of competent jurisdiction;
- the requirements set out in subsection 22.2(1) of the Act and section 7 of the Regulations have been met; and
- there are reasonable grounds to believe that the contract was not awarded in accordance with the *Financial Administration Act.*

An investigation will be undertaken if a supplier meets the requirements prescribed by the Regulations and the complaint raises, for example:

- discriminatory or restrictive evaluation criteria
- the directed award of a contract
- the award of a contract resulting from an unfair advantage
- the application of undisclosed evaluation criteria

Complaints from a supplier regarding the *administration* of a contract must also meet some of the above criteria; however, no dollar thresholds apply. In addition, contract administration complaints are assessed against the following regulatory prescribed criteria:

- the Complainant must have been awarded the contract to which the complaint relates; and
- the complaint does not involve the scope of work or the application or interpretation of a contract's terms or conditions.

As with complaints regarding awards and administration, if the Ombudsman determines that the complaint meets the criteria as prescribed by the Regulations and merits review, the Ombudsman is required to notify the Complainant and the affected department of the decision and provide that department with a copy of the complaint for a response. During the determination period (10 working days) and with the Complainant's written permission, the Office will:

- contact the relevant department to flag the concern and gain insight into its perspective;
- attempt to facilitate a resolution within the determination period; and
- if the facilitation process is unsatisfactory and does not result in the withdrawal of the complaint or the cancellation of the award of the contract in question, initiate an investigation as prescribed by the Regulations.

The Office will produce a report within 120 working days, which will include findings and/or any recommendations to the Minister of the affected department, the Minister of PWGSC and the Complainant.

If the complaint does not meet the criteria prescribed by the Regulations, the Office may:

- with the supplier's permission, contact the department to attempt to address the concern;
- provide alternate contact information, assistance and options for consideration; and
- with the supplier's permission, refer the concern to the appropriate deputy head for any necessary action.

Although the Regulations may be considered prescriptive, the Office has the discretion to act informally when facilitating procurement-related issues. Within the established process, as illustrated in Diagram I, the team of procurement investigators may suggest other courses of action for consideration, including encouraging departments to actively

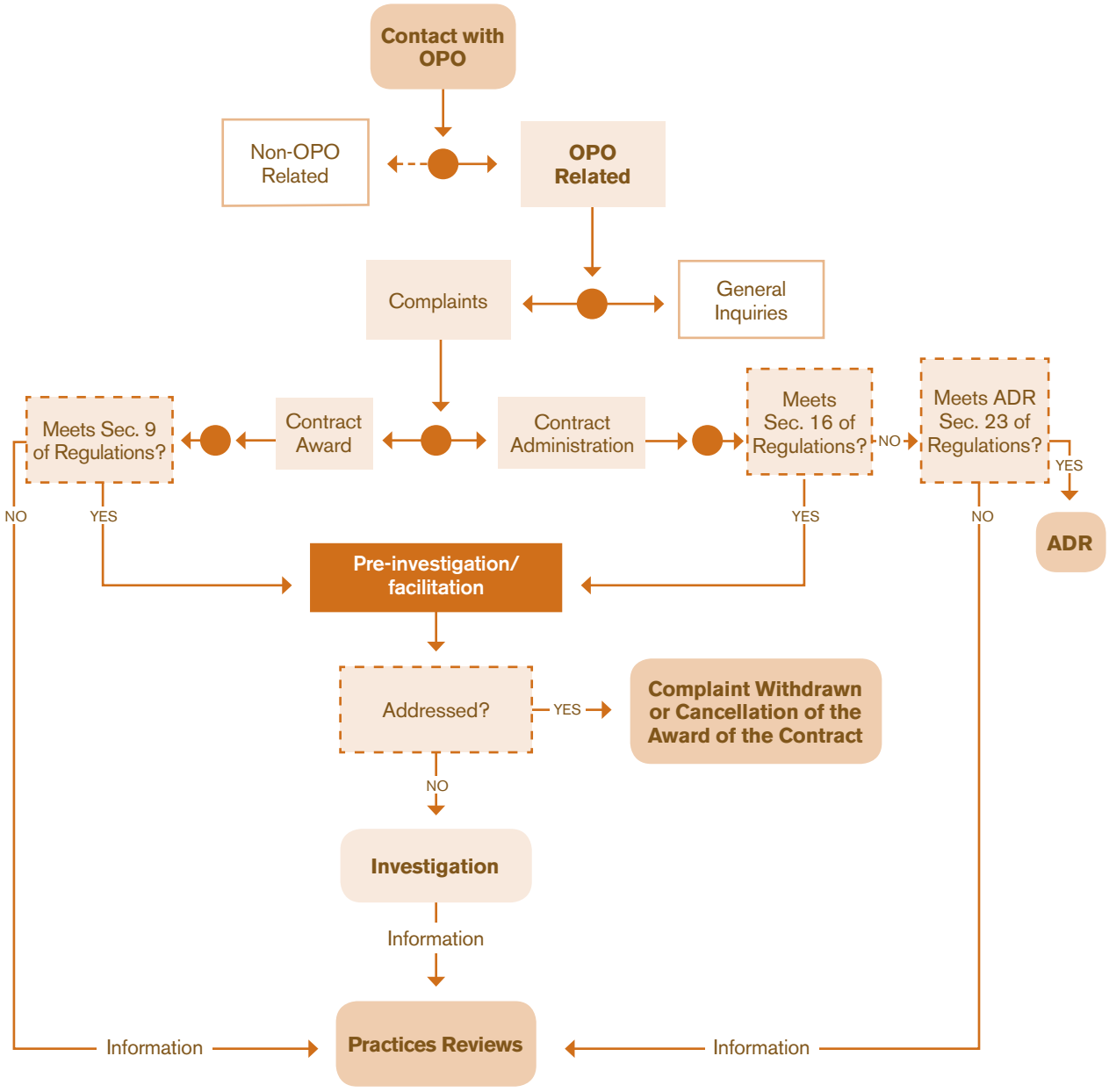
TESTIMONIAL...

The Office was contacted by a firm interested in supplying the federal government and seeking to find information on how to do business with the federal government. The information relayed by another organization was unclear, so the firm turned to the Office to clarify and demystify the process. The relieved supplier stated:

"I just wanted to let you know that (the investigator) has been extremely helpful. Her professionalism and kindness is something we do not see very often these days when dealing with the government and it was refreshing to witness it. Thank you for your help and that of your team."

Diagram I

Procurement Inquiries and Investigations Process Map



participate in addressing supplier concerns through dialogue and providing suppliers with information and assistance to increase their knowledge and understanding of the Government of Canada's procurement processes.

The Office is engaged in facilitating disputes amongst procurement stakeholders and is committed to proactively finding solutions before issues escalate. This early intervention helps to avoid long and costly disputes where business relationships are negatively impacted. Through our work with departments to proactively address supplier complaints and concerns, all parties benefit.

During the last fiscal year (2010-2011), the Office was contacted 329 times. As illustrated in Diagram II, roughly 75% (246) of these contacts were inquiries or complaints involving some aspect of procurement, of which 45% (110) were actual complaints. Diagram III shows that 74% (81) of these complaints pertained to contract award while 21% (23) regarded contract administration.

Diagram IV provides an indication of the most common areas of concern (regarding both contract award and administration) for suppliers.

The primary areas of concern raised by suppliers regarding the *award* of contracts related to:

- the evaluation of bids
  (e.g. an unfair evaluation process)
- the evaluation and selection plan themselves
  (e.g. restrictive mandatory criteria or a biased rating scheme)
- the procurement strategy
  (e.g. too often non-competitive)
- the statement of work
  (e.g. unclear or favouring a specific bidder)

With regard to the *administration* of contracts, the following are the primary areas of concern raised by suppliers:

- payment issues
  (e.g. late payments)
- contract execution
  (e.g. requesting extras or altering the contract)

Diagram II

2010-2011: Volume of Contacts – 329

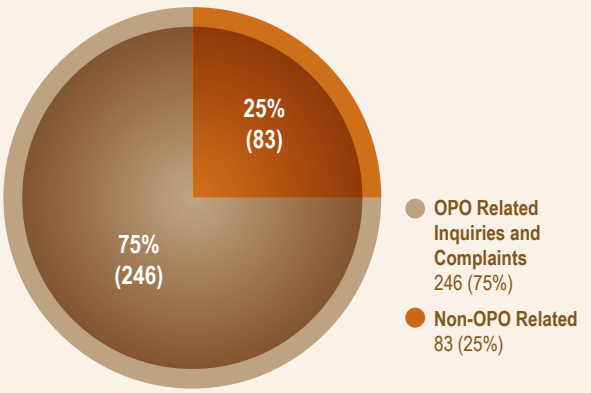


Diagram III

2010-2011: 110 Complaints Breakdown

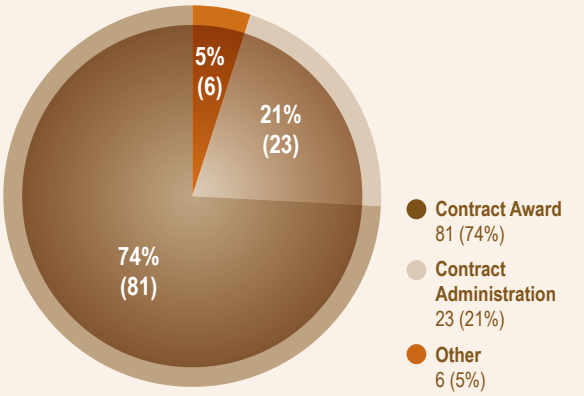


Diagram IV

2010-2011: Concerns Related to the Top Six Elements of the Procurement Process

*Complainant may raise numerous issues in filing a single complaint

The Office receives inquiries from stakeholders looking for information to better understand the various procurement tools and processes used by the federal government. The contacts suggest that suppliers need to be provided with accessible and clear instructions on how to do business with the federal government. The volume of calls the Office receives suggests that federal organizations need to better educate potential suppliers to enable them to submit responsive proposals for inclusion in procurement vehicles such as standing offers and supply arrangements.

Suppliers have also advised the Office of confusion regarding the bidding process on government solicitations. Suppliers appear to be having difficulties understanding solicitation documents and therefore have problems submitting compliant proposals. For example, the Office hears of suppliers encountering unclear or contradictory solicitation terms and conditions and varied procurement processes for similar acquisitions by different federal organizations. Finally, suppliers often express frustration with obtaining information or clarification from government procurement officials.

The volume of calls the Office receives suggests that federal organizations need to better educate potential suppliers to enable them to submit responsive proposals for inclusion in procurement vehicles such as standing offers and supply arrangements.

INVESTIGATIONS

Despite our best efforts to alleviate concerns that come to our attention, in the past fiscal year three investigations were launched and one that commenced in 2009 was withdrawn by the Complainant. Accordingly, the Office released three investigative reports. Each report concerned complaints about the award of a contract, as follows:

1. A complaint was received concerning the award of a contract for services. The Complainant alleged that the process was unfair and believed that an inappropriate relationship existed between the Department and winning bidder and that a conflict of interest existed. The Office's investigation did not provide evidence to substantiate the allegations. However, the Office concluded that the situation raised the "perception" of conflict of interest or the possibility of unfair advantage. The investigation also revealed that some of the evaluation criteria were subjective, that the procurement strategy lacked precision and that there was inadequate documentation to support the evaluation. The Office's recommendations resulted in the Department's decision to terminate its arrangement with the bidder and to take corrective action to improve its procurement practices.

2. A complaint was lodged regarding mandatory criteria, which the Complainant alleged limited the openness of the solicitation process on the basis that it was restrictive and discriminatory. The Complainant attempted to address these concerns with the Department, but was not satisfied with the response. The Office's investigation found that the mandatory criteria did not prevent the Complainant from bidding on the requirement. However, the Department agreed to take action by undertaking further analysis.

3. A Complainant contended that a Department did not award a contract to the lowest bidder, as set out in the Request for Proposals (RFP). It was further alleged that contradictory wording in the RFP led to a wrongful disqualification of the Complainant's bid. The Office's investigation concluded that the wording was unclear and potentially led to conflicting interpretations. Since a condition in the Complainant's proposal resulting from the RFP had rendered their bid non-compliant, it was recommended that the Department improve the identified shortcomings in future RFP processes.

4. An investigation that commenced in the 2009-10 fiscal year was withdrawn by the Complainant. For a variety of reasons, including the time taken by the Office to process the file and additional delays related to a perceived conflict of interest, the Complainant withdrew the complaint out of frustration.

In addition to the above-mentioned cases, two investigations are currently underway.

TESTIMONIAL...

A complaint was prompted when, after weeks of waiting for a quote from the Complainant on a "right of first refusal" standing offer, the procurement authority went to the next supplier on the list. The Complainant stressed that since the procurement authority had not given a response deadline, it should have waited for the Complainant's response. Through facilitation, both the supplier and the procurement authority learned that providing a deadline for bids must be included in solicitations to avoid confusion and misunderstanding. The procurement official wrote: "*I have not had any issues until I received this complaint and take pride in transparency. I understand your point pertaining to time sensitivity, and on all future requests I will be including a timeline for responses*".

TESTIMONIAL...

"I just wanted to write you a quick note to let you know how impressed I was with the service provided by your organization. As you know from the documentation the file in question has been bouncing around at great cost…As a small business it is quite intimidating to have Her Majesty say "pay up or go to collections," particularly when we feel adamant the company acted in good faith and did nothing wrong…

Your intervention I think has saved the Crown untold salary dollars dealing with the issue and produced a balanced result based on the facts of the situation. For that we thank you. I wish we had been aware of the service earlier."

ALTERNATIVE DISPUTE RESOLUTION

The Regulations stipulate that the Ombudsman will ensure the provision of an Alternate Dispute Resolution (ADR) process. Either party to a contract can request an ADR process; however, both parties must voluntarily agree to participate. The purpose of an ADR process is to create an unbiased environment in which the parties can reach an amicable settlement to their dispute without resorting to an often lengthy and expensive judicial review.

When parties agree to an ADR process regarding the interpretation or application of a contract's terms and conditions, the Office provides independent ADR services. The ADR process is confidential and any resulting settlement or agreement is considered confidential and legally binding between the parties.

In past years, the Office has provided parties to a conflict with three options: facilitation; mediation; and neutral evaluation. The Office is in the process of undertaking a feasibility study to determine potential future options. In the interim, the Office has ensured that facilitation capabilities are available internally, with minimal to no charge to the parties.

As prescribed in the Regulations, within 10 working days of receiving an ADR request, the Ombudsman shall ask the other party (or parties) to agree to participate. In keeping with its business model, the Office attempts

ALTERNATIVE DISPUTE RESOLUTION SERVICE

Facilitation: an opportunity for parties to come together in an unbiased setting to discuss their perspectives and participate in open dialogue concerning a contractual dispute, in the hope of coming to a mutually satisfactory agreement.

to address concerns within this 10-day period by encouraging dialogue. Should a party decline to participate, the Ombudsman is required to notify the requesting party that their ADR request cannot be granted.

In the 2010-2011 fiscal year, the Office received ten ADR requests.

- Two did not meet the requirements under the Regulations, as they were not filed by parties to the contracts in dispute.
- Of the remaining eight that did meet the regulatory criteria:
  - four were declined by the federal department involved;
  - three were resolved to the satisfaction of the parties using facilitation; and
  - one is ongoing.

In all cases, at issue was the application or interpretation of a contract's terms or conditions.

Responding to inquiries and facilitating disputes also allows the Office to identify systemic concerns within the federal procurement system for further review and study.

PROCUREMENT PRACTICES REVIEWS

The Office reviews federal departments' and agencies' procurement practices to assess their fairness, openness and transparency and recommend improvements and best practices. In conducting these reviews, the Office maintains independence from the departments and agencies it reviews.

Although reviews generally follow the same type of process as performance audits, the Office uses a systematic, evidence-based approach in carrying out its work. The Office examines past and current practices and takes into consideration the observations or findings of previous audits or assessments. The reviews are based on the Office's business model of collegiality and cooperation and seek to highlight good practices and identify areas for improvement. The review reports are based on indicative evidence in order to obtain a reasonable level of assurance.

> **Although reviews generally follow the same type of process as performance audits, the Office uses a systematic, evidence-based approach in carrying out its work.**

In the 2010-2011 fiscal year, the Office launched four Procurement Practices Reviews (PPR). With the arrival of the new Ombudsman, the decision was made

PRACTICES REVIEWS STANDARDS AND PROCEDURES

The Office has developed a Review Standards and Procedures Manual, which sets the benchmarks for the Office's review standards and contains an outline of all the PPR steps, from initial planning to recommendation and follow-up.

This document will be used to develop a guide for federal organizations participating in a review. This guide will give a sense of what to expect from the Office and what is expected from an organization. The aim is to increase the level of trust needed to foster meaningful feedback to the Office.

"DIRECTED CONTRACTS UNDER $25,000—A RISK-BASED STUDY"

The study revealed that, over the last ten years, approximately 90% of all government contracts had values below $25,000 and the majority were directed to a preselected supplier without competition.

The study found shortcomings in the implementation of two key government procurement transparency measures: justifying and documenting decisions; and publicly disclosing information on government contracts over $10,000. Firstly, when procurement decisions are poorly documented, transparency is weakened, as is the fairness and openness associated with directed contracts. Secondly, information on contracts over $10,000 is not consistently reported, consolidated or searchable and does not contain enough detail for suppliers to decide if it is worthwhile to pursue government business.

The federal government has determined that one of the most significant risks associated with procurement is the training and experience of its procurement specialists. In 2006, it introduced a Certification Program for functional procurement specialists. Certification is not mandatory; however, specialists are required to take some basic training courses. There also appears to be a gap in the training of other personnel involved in the process, such as program managers and individuals performing a challenge function in procurement oversight.

Lastly, while the Treasury Board declared the use of standing offers and supply arrangements mandatory in 2005 for 10 commodity groups of commonly purchased goods and services, the study found that in 2008 more than 200,000 out of approximately 370,000 contracts (including amendments) under $25,000 were awarded through contractual means other than a standing offer or supply arrangement.

to move from an annual publishing of all practices review reports to the staggering of reports throughout the fiscal year. This change was introduced in order to reduce the workload on impacted departments and more equitably distribute the Office's workload throughout the year. Consequently, the four reviews undertaken in the 2010-2011 fiscal year are currently in various stages of completion, as follows:

1. Following the receipt of a complaint from a public organization, the Office is conducting a practices review regarding the award of four contracts for professional services issued as a result of Advanced Contract Award Notices (ACANs).

2. The Professional Services Online (PS Online) tool serves a large number of smaller suppliers that are stakeholders of the Office and was therefore identified as a topic for review.

3. A follow-up of the recommendations and good practices noted in the 2008-2009 PPRs is underway. The Office asked the 16 departments and agencies that participated in the original reviews to report what changes had been implemented or planned subsequent to the reviews.

4. A review of low-dollar value procurement was initiated in certain departments. This review is addressing some of the concerns raised in the Study on Directed Contracts Under $25,000 referred to in the following point.

In addition to the initiation of these four reviews, one study of procurement practices was completed and published in the 2010-2011 fiscal year. The Study on Directed Contracts Under $25,000 published in July 2010 (see insert above—the full study is available at **www.opo-boa.gc.ca**), was risk-based, and while it did not include recommendations to improve fairness, openness and transparency, it did identify effective practices.

OUTREACH

The Office continued to inform procurement stakeholders of its mandate and offerings. Four stakeholder groups were the focus of the Office's effort: national procurement associations, industry associations, other ombudsmen offices and federal government departments.

The Office has also attracted international interest from a number of foreign governments and welcomed delegations from Russia, China, Ethiopia and the European Union.

Continuing with the Office's efforts to be accessible and user-friendly to both the supplier community and government departments and agencies, the Office updated its Web presence and supplier complaint form. There were also several articles produced on the Office's operations for procurement magazines.

These outreach efforts have proven to be an effective means of communicating our presence and role. They have also continued to provide the Office with opportunities to understand our stakeholders while informing them of our mandate.

OPERATIONS

To ensure that our work is impartial and conforms to the highest professional standards, the Office developed a values and ethics code (insert below) which also serves to maintain and enhance public confidence in the integrity of the Office. All public servants, consultants, contractors and temporary staff who perform work for the Office are expected to adhere to this Code. The Office is responsible for ensuring that it demonstrates its values, ethics and professional conduct in all its actions and behaviours.

In addition, as part of an ongoing effort to create a work environment conducive to cooperation and collaboration, the Office conducted an employee survey. The results of the survey identified potential improvements in the areas of mobility and communication; however, overall the feedback demonstrated a high level of satisfaction with our work environment and culture.

With the arrival of the new Ombudsman, the Office initiated the development of a strategic plan. The completed plan will set forth the overall vision and mission of the Office and be supported by an operational plan that will, in part, address the results of the employee survey.

THE OFFICE'S CODE OF VALUES, ETHICS AND PROFESSIONAL CONDUCT

The Office acts at all times to protect the public interest and create an atmosphere of trust with colleagues and stakeholders by:

- demonstrating respect, fairness and courtesy;
- performing duties so that confidence and trust in the integrity, objectivity and impartiality of the Office are preserved and enhanced;
- responding in an unbiased, independent and efficient manner;
- being pragmatic and reasonable and demonstrating rigor in all activities;
- continuously aiming to excel in conducting the work of the Office;
- ensuring that the value of transparency in the Office is upheld without compromising the value of confidentiality where it is required by law or circumstance; and
- ensuring that diversity and quality of life are part of the Office culture.

Moving Forward

Evolving the Office from basic start-up mode to optimum operation and delivery is essential to realizing our mission to promote fairness, openness and transparency in federal procurement. Instrumental to this evolution will be the implementation of the Strategic Plan in the coming year. This plan will be guided by three key strategic drivers, which form the pillars of our organization: EDUCATE–FACILITATE–INVESTIGATE.

Complementing the development of the Strategic Plan will be a number of initiatives to better position the Office for optimum operation and delivery. These initiatives will include:

1. **Increased Outreach:** The Office can only be effective if it is in tune with the community it was created to serve. This means that the development and implementation of a concerted and sustained outreach program will be instrumental. In the 2011-2012 fiscal year, we will increase our emphasis on the ongoing process of listening to and understanding our stakeholders.

2. **Independent Evaluation:** Our ability to make the necessary adjustments to the nature of our work and organization will be heavily influenced by gaining a better understanding of how we are executing our responsibilities. Accordingly, an independent formative evaluation of our first three years of operation will be conducted.

3. **Governance:** To be truly effective at implementing our mandate, we will review our governance structure, systems and processes to ensure that our "service first" attitude influences and permeates how we do things. This will also embrace all aspects of human resource management, from recruitment and staffing to performance management and succession planning.

Our overarching purpose in launching the above initiatives is to meet the expectations of Parliamentarians and fulfill the mandate they envisioned when the Office began operating in 2008. The Office will serve stakeholders by educating, facilitating and investigating, while recognizing and respecting that the Office is neither a lobbyist for suppliers, nor an apologist for government.

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Appendix

OFFICE OF THE PROCUREMENT OMBUDSMAN

STATEMENT OF OPERATIONS FOR THE YEAR ENDED MARCH 31, 2011

MARCH 31, 2011

Statement of Operations

Expenses	2010-2011	2009-2010
	($000)	($000)
Salaries and employee benefits	2,611	2,884*
Professional Services	261	244
Office removal an relocation	-	29
Operating expenses	67	95
Information and communication	27	46
Materials and supplies	53	38
Paid to BC Ombudsman	-	27
Corporate services paid to PWGSC	405	536
Services from Audit Services Canada	-	84
Total	**3,424**	**3,983**

*The amount of $2,884,000 in salaries and employee benefits has been restated from $2,305,000 in the 2009-2010 Annual Report, as $579,000 in employee benefits had been omitted.

OFFICE OF THE PROCUREMENT OMBUDSMAN

NOTES TO THE STATEMENT OF OPERATIONS FOR THE YEAR ENDED MARCH 31, 2011

1. Authority and objective

The Office of the Procurement Ombudsman (OPO) was established by amendments to the *Public Works and Government Services Act.* OPO is an independent organization with a government-wide mandate, which is defined in the *Federal Accountability Act*. Its overall objective is to ensure the fairness, openness and transparency of government procurement.

2. Parliamentary authority

The funding approved by the Treasury Board for the operation of the Office of the Procurement Ombudsman is part of Public Works and Government Services Canada's (PWGSC's) A-base and consequently, the Office is subject to the legislative, regulatory, and policy frameworks that govern the Department. It is recognized, however, that it is implicit in the nature and purpose of the Office of the Procurement Ombudsman that it carries its mandate in an independent fashion, and be seen to do so, maintaining an arm's length relationship with PWGSC in its day-to-day operations. Its budget is approved by the Treasury Board.

3. Related party transactions

The Office has a memorandum of understanding whereby PWGSC provides corporate services to the Office in the areas of finance, human resources and information technology. In 2011, the Office incurred expenses of $405 thousand for these services, which are broken down as follows:

Corporate services provided by PWGSC	2010-2011
	($000)
Finance	67
Human resources	123
Information technology	215
Total	**405**

4. Comparative figures

In 2010-2011, the office was subject to the departure of the Ombudsman. The new Ombudsman was not appointed until January and there were also two positions at the executive level that remained vacant for a period of three months or more.

The Office of the Procurement Ombudsman invested in training for its personnel, increasing the amount of Professional Services.