



Follow-up Report on the 2016-2017 Procurement  
Practice Review: Review of Non-Competitive  
Contracting

July 2019



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## Main Points

### What We Reviewed

1. In 2016-2017 the Office of the Procurement Ombudsman (OPO) conducted a procurement practice review entitled *Review of Non-Competitive Contracting*. The review examined procurement practices in the following departments: Agriculture and Agri-Food Canada (AAFC); Immigration, Refugees and Citizenship Canada (IRCC); and Statistics Canada. The review made five recommendations directed at AAFC. The remaining two departments did not receive recommendations.
2. In January 2019, OPO asked AAFC (the Department) to provide information regarding actions taken in response to the recommendations in the above-noted review.
3. The purpose of the follow-up exercise was to determine whether the Department considered and took action, or developed plans, in response to the Procurement Ombudsman's recommendations. In this regard, OPO assessed the information provided by the Department for overall reasonableness and credibility. This report provides a summary, as well as specific examples, of progress made by the Department in implementing the recommendations from the original review.

### Why It's Important

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

## What We Found

5. The Department stated it had taken actions in response to the five recommendations made by the Procurement Ombudsman. Using a scale provided by OPO,<sup>1</sup> the Department self-assessed the level of implementation of one recommendation as “substantial implementation” (Level 4), and the remaining four were self-assessed as “full implementation” (Level 5).
6. The Department provided OPO with documentation to support the results of its self-assessment. Upon reviewing the documentation provided, OPO assessed the level of implementation of the Procurement Ombudsman’s recommendations by the Department as “full implementation” (Level 5).

## Introduction

7. OPO published the following report in December 2016:
  - [Procurement Practice Review: Review of Non-Competitive Contracting](#)

## Objectives

8. The objectives of this follow-up review were to determine:
  - whether the Department considered the recommendations made by the Procurement Ombudsman in the December 2016 review with respect to its procurement practices;
  - whether action plans to respond to the recommendations were prepared and approved; and
  - what actions were undertaken in response to the recommendations, and the extent to which each action had been monitored and completed.
9. OPO expected the Department to have introduced changes to improve its procurement practices in response to the Procurement Ombudsman’s recommendations.

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<sup>1</sup> The OPO assessment of implementation levels are: Level 1 – No progress or insignificant progress; Level 2 – Planning stage; Level 3 – Preparations to implement; Level 4 – Substantial implementation; Level 5 – Full implementation; Obsolete – Recommendation is no longer applicable.

## Scope, Methodology, and Timing

10. OPO requested the Department provide information on actions implemented or planned as a result of the recommendations in the original (i.e. December 2016) review. This report reflects actions reported to OPO by the Department up to February 2019.
11. The approach used for this follow-up exercise differs from the approach used in OPO's procurement practice reviews. The assessment of progress made against recommendations was compiled from the Department's self-assessment and assertions regarding its plans and actions, coupled with supporting documentation. For each recommendation, OPO reviewed the information provided for overall reasonableness and credibility. This was done by:
  - verifying whether any contradiction existed between the Department's assertions and information available from publicly accessible sources, or information obtained during the original review;
  - analyzing the Department's responses to understand how its actions addressed the recommendations, and whether there were plans to monitor the results or effectiveness of these actions; and
  - seeking clarification, as required, to ensure a clear understanding of the information and supporting documentation provided by the Department.
12. This report provides an overview of the Department's assertions, as well as OPO's assessment, on progress in implementing changes in response to the recommendations contained in the original review.

## Assessment of Implementation of the Department's Actions

### Summary of Original Review Findings

13. The original review examined a sample of 90 non-competitive contracts across AAFC, IRCC and Statistics Canada to determine whether:
  - non-competitive rationale was on file and consistent with policy requirements;
  - amendment rationale was on file and consistent with policy requirements;
  - contract splitting occurred;
  - repetitive contracting occurred; and

- controls were in place to prevent contract splitting and repetitive contracting.
14. The original review found that Statistics Canada and IRCC were able to demonstrate that nearly all non-competitive contracts reviewed were awarded and issued according to the requirements of the Treasury Board (TB) Contracting Policy, and therefore supported the principles of fairness and transparency. As stated above, OPO did not make any recommendations to either Department to improve its procurement practices.
  15. Of the 30 files reviewed at the Department, seven were not awarded in a manner consistent with the TB Contracting Policy. Errors observed included:
    - one file exceeded the \$25,000 delegated authority;
    - four files from one regional office pertained to amendments to non-competitive contracts which were inconsistent with the TB Contracting Policy; and
    - two files were initially missing the non-competitive justification.
  16. The original review also examined an additional six files at the Department related to the purchase of livestock. OPO noted inconsistencies between the Department's method for procuring livestock and the TB Contracting Policy.
  17. The Department procures livestock through auctions and OPO observed that it was not clear whether the Department considered the procurement of livestock through an auction to be a competitive or non-competitive contract.
  18. OPO also noted that the Department's approach to procuring livestock created the appearance of contract splitting, as the Department would report each purchase of livestock individually.
  19. It was also unclear how the Department ensured that the public reporting of its livestock purchases accurately reflected either the competitive or non-competitive nature of the contract.

## Original Review Recommendations

20. The Procurement Ombudsman recommended the Department:
  - increase its oversight of non-competitive contracts and associated amendments, particularly in its regional offices, to ensure that procurement practices are consistent with the requirements of the TB Contracting Policy;

- document its rationale for treating each livestock transaction as a separate procurement, and ensure the rationale is aligned with, as applicable, the TB Contracting Policy, Government Contract Regulations and Canada's trade agreements;
- clarify and document whether livestock purchased at auction is deemed by the Department to be competitive or non-competitive;
- determine whether targeted monitoring of livestock purchases is required, so as to ensure staff with delegated authority to purchase livestock are correctly exercising competitive and non-competitive authorities;
- ensure all public reporting related to livestock purchases accurately reflects the competitive or non-competitive nature of each procurement.

## Summary of Departmental Response to Follow-up

21. The Department stated it took actions to address the recommendations made in the original review.

### *Response to Recommendation 1*

22. The Department stated it had substantially implemented (level 4) the following actions to respond to Recommendation 1:
  - Visits to regional offices to provide training and conduct on-site reviews to rectify procurement practices;
  - Bi-weekly meetings with regional contracting authorities;
  - Standing offers for recurring needs;
  - Weekly monitoring of contracting data and quality assurance of procurement files every two months.

## Assessment of Departmental Response

23. The Department provided sufficient documentation to support its progress on implementing Recommendation 1.
24. In regard to the first action, the Department provided a summary of a regional site visit in 2016 and of the planning of a site visit that was held in November 2016. The summary included a list of action items that resulted from the meeting, ranging from establishing

procurement tools for recurring needs and the use of acquisition cards.

25. In regard to the second action, the Department provided material that was shared with regional authorities in a meeting held in October 2018. The material included guidance on sole source justifications, maintaining procurement files, and contract amendments. The Department provided a sample agenda and minutes of a bi-weekly meeting.
26. In regard to the third action, the Department provided a list of standing offers used for recurring procurement needs. These standing offers have been in place since April 2017.
27. In regard to the fourth action, the Department provided examples of its quality assurance activities to support its oversight of the procurement function. It provided an example of its quality assurance reviews conducted on procurement files which tested whether the planning, solicitation, and administration of the contract were compliant with the TB Contracting Policy. The Department also provided information on its monitoring activities on contracting data. Both of these initiatives included monitoring of the procurement function in the regional offices.

### *Response to Recommendations 2 - 5*

28. The Department stated it had fully implemented (Level 5) the following actions to respond to recommendations concerning the procurement of livestock:
  - consultations were held with Public Services and Procurement Canada (PSPC) and the Treasury Board Secretariat (TBS) to assess the Department's method of procuring livestock;
  - its internal procurement processes for livestock were reviewed and adjusted to ensure that the Department does not exceed its non-competitive delegation of authority of \$40k. The Department also put a delegation instrument in place;
  - communication was shared with staff who have delegated contracting authority indicating that livestock purchases at auction are classified as non-competitive;
  - processes for the proactive disclosure of livestock contracts were adjusted so that individual lots of livestock are reported as non-competitive contracts; and
  - Monitoring activities such as random sampling of procurement files every two months.



## Assessment of Departmental Response

29. The Department provided documentation to support its implementation of Recommendations 2-5 concerning the procurement of livestock.
30. The Department shared its consultations with PSPC and TBS regarding its method of procuring livestock. Consultations confirmed the Departmental view that it is an industry practice to sell livestock at regionally based auctions and agreed that purchases at an auction would be a non-competitive contract.
31. A Guide to Procurement at AAFC was finalized in January 2018, and included the Department's purchasing of livestock as a non-competitive procurement and instructions on how to report these contracts publicly.
32. The Department shared an e-mail that was sent to procurement staff in July 2016 outlining its delegated authority limits for the procurement of livestock. The Department also provided an e-mail demonstrating that the Guide to Procurement at AAFC was shared with staff in January 2018, which included the delegation of authority limits for procuring livestock.
33. The Department stated that routine quality assurance activities were sufficient to ensure that it was complying with the TB Policy on Contracting. It shared examples of its monitoring activities on procurement which included quality assurance testing of the planning, solicitation, and administration of the contract.

## Conclusion

34. The Department considered the Procurement Ombudsman's recommendations from the original procurement practice review and provided information on its actions. The Department stated it had either substantially (Level 4) or fully (Level 5) implemented actions to respond to the recommendations, and provided documentation to substantiate this statement. OPO's analysis found the Department's response (i.e. the self-assessment and supporting documentation) to be reasonable and credible.

## Annex A – OPO Recommendations and the Department’s Responses

OPO Recommendations	Department’s Responses
<p>AAFC should increase its oversight of non-competitive contracts and associated amendments, particularly in its regional offices, to ensure that procurement practices are consistent with the requirements of the TB Contracting Policy.</p>	<p>4 out of 5 – Substantial Implementation                      Visits were made to regional sites to provide training and conduct on-site reviews to rectify procurement practices                      Review of purchase order and contracting data in SAP (weekly monitoring)                      Random sampling (QA) of complete procurement and contracting files every two months.                      Meetings (every two weeks) with Integrated Service Managers and Procurement officers.                      Implementation of standing offers for recurring needs are being established.</p>
<p>AAFC should document its rationale for treating each livestock transaction as a separate procurement, and ensure the rationale is aligned with, as applicable, the TB Contracting Policy, <i>Government Contract Regulations</i> and Canada’s trade agreements.</p>	<p>5 out of 5 – Full Implementation                      AAFC acknowledges that purchases made at auction would not meet the prescribed requirements set out in section 7 of the Government of Canada Contract Regulations (GCRs) for soliciting bids. Treasury Board of Canada Secretariat recognizes that is an industry practice to sell livestock at regionally based auctions. Consultation with Public Services and Procurement Canada confirmed that the Government has no prescribed process for procuring livestock.</p>
<p>AAFC should clarify and document whether livestock purchased at auction is deemed by the Department to be competitive or non-competitive.</p>	<p>5 out of 5 – Full Implementation                      Communication sent out to staff with delegated contracting authority informing them that livestock purchased at auctions are classified as non-competitive when entering into SAP.</p>
<p>AAFC should determine whether targeted monitoring of livestock purchases is required, so as to ensure staff with delegated authority to purchase livestock are correctly exercising competitive and non-competitive authorities.</p>	<p>5 out of 5 – Full Implementation                      AAFC’s internal procurement processes and delegations have been reviewed and adjusted to ensure procurement of lots and individual sales do not exceed non-competitive delegation of \$40K. Delegation instrument is in place.</p>
<p>AAFC should ensure all public reporting related to livestock purchases accurately reflects the</p>	<p>5 out of 5 – Full implementation                      AAFC’s internal procurement processes and</p>

<b>OPO Recommendations</b>	<b>Department's Responses</b>
competitive or non-competitive nature of each procurement.	delegations have been reviewed and adjusted to ensure procurement of lots and individual sales do not exceed non-competitive delegation of \$40K.