

### Office of the Procurement Ombudsman

- •Government-wide mandate
- Neutral
- Independent
- Created to fill a gap

... neither a
..





#### Mandate



Alternative Dispute Resolution



Review of Complaints



Review of Procurement Practices

## Promoting fairness, openness and transparency in federal procurement





### Did You Know?

- What are the financial limits, if any, for the Ombudsman regarding:
  - Review of complaint for the award of a contract?
  - Review of complaint for the administration of a contract?
  - Alternative Dispute Resolution?
- Which is more common, complaints about goods or services?
- What are the most commonly raised issues to the Office?
- What percentage of findings were in favor of a federal organization in the 6 Reviews of Complaints of 2015-2016?





### **Procurement Puzzlers**

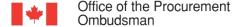
A call-up for a service contract states proposed resources must have a high school diploma. A supplier proposes a resource and submits their BA and MA.

Should the supplier (and the resource) be considered compliant?



#### **Procurement Puzzlers**

Is requiring liability insurance at bid closing discriminatory?





### Case Study #1

Complaint	Complaint regarding the award of a contract for the acquisition of services
Issues	#1 A mandatory criterion requesting the membership to a professional association for [the services].
	#2 Was the Complainant's proposal found non- responsive because the Department's interpretation of Mandatory Criterion M1 was overly restrictive?





#### Issue #1 -- A mandatory criterion requesting the membership to a professional association for [the services]

#### **According to** | Supplier questions:

- **Supplier** importance and value-add of a professional membership in terms of performance and actual quality of work.
  - relevance of requirement to hold a membership to a professional association, deeming it unnecessary and eliminating equal opportunity to bid.

#### Response from **Department**

Membership to a professional association... « is to foster and encourage professionalism, ethical conduct and ongoing development in the industry. » « provides technical assistance, advice and supports member training. »

Issue #2 -- Was the Complainant's proposal found non-responsive because the Department's interpretation of Mandatory Criterion M1 was overly restrictive?

#### According to Supplier

Professional organization provided supplier with a letter to confirm membership (and not a membership certificate). In the absence of the certificate, the Department could have contacted professional organization to verify membership.

#### Response from **Department**

The department has an obligation to evaluate the bids in accordance with the criteria stated in the RFP, which explicitly and unambiguously stated the requirement to provide a copy of the certificate.





### Case Study #2

Complaint	Complaint regarding the award of a contract for the acquisition of services
Issues	#1 Were points for a rated criterion inappropriately awarded to the Complainant's proposal?
	#2 Did the Department use an undisclosed evaluation criteria?
	#3 Was it appropriate for the Department to assume the Complainant could not complete the work within the proposed level of effort?





## Issue #1 -- Were points for a rated criterion inappropriately awarded to the Complainant's proposal?

According to Supplier	It appears the Complainant's bid was unfairly penalized multiple times for presenting a level of effort of 40 days to deliver the work.
Response	·
from	substantially inadequate, the proposed
Department	phases, schedule and Start/Finish of the
	contract are adversely affected.
	Given that the level of effort is deemed
	insufficient, these criteria are impacted by
	an increase in the level of effort/resources
	required to complete a given project.





### Issue #2 -- Did the Department use an undisclosed evaluation criteria?

According to	The benchmark used by [the Department]
Supplier	of 55-65 days appears to be an undisclosed
	evaluation criteria.
	Bids must be evaluated in accordance with
	the evaluation criteria established in the bid
	solicitation and evaluators must not use
	criteria or factors not included in the bid
	solicitation.
Response	The project authority's knowledge of how
from	much effort this could take does not qualify
Department	as a "secret criterion" that would be
	unanticipated by qualified bidders.





# Issue #3 – Was it appropriate for the Department to assume the Complainant could not complete the work within the proposed level of effort?

According to Supplier	[The supplier] is very comfortable in being able to complete the engagement with a level of effort of 40 days, and believes it inappropriate to be penalized points given the Crown's assumed a level of effort of 55-65 days.  The proposed team was a senior team with the knowledge and experience to successfully complete the audit within the timeframe and level of effort proposed.
Response from Department	Determined that the supplier's proposed level of effort of 40 days was insufficient « Their LOE was nearly 50% below that needed for similar projects recently undertaken in our department. The value of the similar projects described in their proposal would also lead one to expect a much higher level of effort»



### Things to consider moving forward

- In the pre-solicitation phase, think critically about the outcomes of the chosen criteria.
- Make sure what you're doing gives your client the best value for money.
- If you don't feel comfortable with a contracting request, call us, we will try to help.



### Questions / Comments





### Office of the Procurement Ombudsman

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