

Office of the Procurement Ombudsman

David Rabinovitch, Deputy Procurement Ombudsman

Who We Are

- Neutral
- Independent
- Government-wide mandate

**Neither a lobbyist for suppliers,
nor an apologist for government**

OPO's Legislative Mandate

1. **Review supplier complaints** about the award of a federal contract (1 contract)
2. **Review departmental procurement practices** to assess fairness, openness and transparency (+/- 40 contracts)
3. **Provide dispute resolution services** (e.g. mediation) for parties to a federal contract

1. Review supplier complaints

Complaints about the award of a federal contract below \$30,300 for goods and \$121,200 for services

Criteria include:

- Complainant is a Canadian supplier
- Complaint is filed in writing, within prescribed timelines
- Contract has been awarded and valued within thresholds above
- Federal organization falls under the jurisdiction of the Ombudsman
- CFTA is applicable, except for dollar thresholds
- Facts or grounds of the complaint are not and have not been before the CITT or the courts
- Reasonable grounds exist to believe the contract was not awarded in accordance with the regulations made under the *Financial Administration Act*

Review supplier complaints (cont'd)

Complaint process (award of contract)

- 30 days to file, from date of public notice/should have known
- 30 days to file, from contracting department denying objection
- Ombudsman has 10 days to determine whether or not to launch
- Department has 15 days to provide comments/documentation
- Ombudsman has 120 days (in total) to provide findings/recommendations
- Recommendations may include compensation (up to 10% of contract value)
- OPO follows up 1 year later

Review supplier complaints (cont'd)

Complaints about the administration of a federal contract, regardless of dollar value

Criteria include:

- Complainant is a Canadian supplier
- Filed in writing, within prescribed timelines
- Complainant must have been awarded the contract in question
- No dollar thresholds
- Complaint cannot be about the application or interpretation of the terms and conditions of the contract

2. Review departmental procurement practices (PPR)

- **OPO reviews departments' procurement practices to assess:**
 - fairness, openness and transparency
 - consistency with laws, policies and guidelines
- **The reviews cover one or multiple departments**
- **OPO makes recommendations for improvement**
- **Follow-up review takes place 2-3 years after the initial report**

Review departmental procurement practices (PPR) (cont'd)

Process for PPRs

- Review practices for acquiring goods/services if reasonable grounds exist
- Ombudsman requests that departments provide documentation
- Department has 30 days to comment on proposed recommendations
- Ombudsman has 1 year to complete review

3. Provide Dispute Resolution Services

- **Informal:**

- ✓ De-escalate the situation
- ✓ Re-establish communication
- ✓ Resolve the issue

- **Formal/Mediation (alternative dispute resolution service – ADR):**

- ✓ Both parties agree to participate
- ✓ Often reach a formal binding agreement with the help of certified mediators

Provide Dispute Resolution Services (cont'd)

Process for ADR

- A party to the contract must request ADR... all parties must agree to participate
- No dollar thresholds (e.g. \$6 K or \$60 M)
- Ombudsman has 10 days to invite other party to participate
- Party has 10 days to respond
- Ombudsman then has 10 days to:
 - Submit a proposal (if all parties agreed); or
 - Notify requesting party that other party declines

Provide Dispute Resolution Services (cont'd)

Benefits of Mediation

- Voluntary
- Neutral
- Confidential
- Quick and inexpensive alternative to litigation
- Mutually agreeable resolution

Knowledge Deepening and Sharing (KDS)

- ▶ Launched in 2018 to provide a **deeper understanding** of key **issues in procurement**
- ▶ Examines **areas of concern** raised by **federal officials** and the **supplier community**
- ▶ Provides **information and guidance** for federal procurement stakeholders

KDS Studies

▶ **7 published KDS reports to date :**

- I. Force Majeure (2021)
- II. Chief Procurement Officer (2021)
- III. Emergency Procurement (2020)
- IV. Late Payments (2020)
- V. Social Procurement: A study on supplier diversity and workforce development benefits (2020)
- VI. Dispute Resolution Mechanisms in Vendor Performance Management (2019)
- VII. Low Dollar Value Contracting (2019)

▶ Available on **OPO's website** (www.opo-boa.gc.ca)

▶ **To be published in 2022: National Security Exception and Social Procurement Set-Aside Programs**

Your Turn

- ▶ Talk to us here today
- ▶ Call or email us later
- ▶ Share your thoughts anonymously

OFFICE OF THE PROCUREMENT OMBUDSMAN

400-410 Laurier Avenue West, Ottawa ON K1R 1B7

Toll-free: 1-866-734-5169

ombudsman@opo-boa.gc.ca

www.opo-boa.gc.ca

 @OPO_Canada

**Promoting fairness, openness and transparency
in federal procurement since 2008**