

Office of the Procurement Ombudsman

Canadian Institute for Procurement and Materiel Management Regional Workshop in Toronto

Case Studies: Resolving Common Procurement Issues

Alexander Jeglic, Procurement Ombudsman

Yaqing Zha, Procurement Practice Review Officer

Sarah Laforteza, Senior Intake Officer

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Agenda

- **Who We Are**
- **Our Mandate**
- **Case Studies: Resolving Common Procurement Issues**
- **Top 10 Issues Raised by Stakeholders in 2022-23**
- **Questions?**
- **Stay Connected**

Who We Are

- Neutral
- Independent
- Government-wide mandate

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

Our Mandate

1. Offer dispute resolution services
2. Review procurement practices of federal departments
3. Review complaints from suppliers

1. Offer Dispute Resolution Services

■ Informal:

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

■ Formal (mediation and facilitation):

- ✓ Both parties agree to participate
- ✓ No cost to parties
- ✓ Often reach a formal binding agreement with the help of OPO certified mediators

*OPO can mediate contract disputes regardless of dollar value...
e.g. \$6,000 or \$60,000,000*

2. Review procurement practices of federal departments

- **Review 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**
- **Launch follow up review**

3. Review complaints from suppliers

Complaint about the award of certain federal contracts below \$30,300 for goods and \$121,200 for services

- Ombudsman **may** recommend compensation (up to 10% of contract value)
- Full transparency: report is **published** online
- We will follow up

Complaints about the administration of certain federal contracts, regardless of dollar value

- Complainant must have been awarded the contract in question

Case Studies: Resolving Common Procurement Issues

Case Study 1: OPO found merit

Acquisition of Senior Leadership Development Services by a federal department

The Complaint:

- Complaint from a supplier (the Complainant) regarding a contract awarded by a federal department.
- Contract was for Senior Leadership Development Services under the ProServices Supply Arrangement.
- Contract valued below the \$121,200 threshold.

Case Study 1 *(continued)*

The Complaint raised the following issue:

- Did the department improperly evaluate proposals and award to the wrong bidder?

Facts:

- Basis of selection:
 - “... bid must ...meet all mandatory technical evaluation criteria to be declared responsive...” **but** the following words were mistakenly deleted: “The responsive bid with the lowest evaluated price will be recommended for award of a contract”.
- Winning bidder mistakenly CC’d the Complainant when submitting bid; Complainant then resubmitted their bid with a lower price prior to bid closing.
- Winning bidder and Complainant both submitted compliant bids. Winning bidder scored 115 technical evaluation criteria points; Complainant scored 105 points.
- Contract was awarded based on technical points (even though the Complainant submitted the lowest financial proposal).

Case Study 1 *(continued)*

Findings:

- Basis of selection was unclear
- Contract improperly awarded based on number of technical evaluation points.
 - As noted by CITT → Criteria from a prior stage of the evaluation should not be applied during a later stage *unless* it was made explicitly clear in advance.
- Department agreed with Ombudsman's findings and:
 - ✓ requested Winning Bidder not start work on contract
 - ✓ reminded employees to implement mandatory peer review of each file before posting RFP
 - ✓ provided a refresher to PGs on the evaluation of vendor proposals

Recommendation:

- Procurement Ombudsman recommended compensation of 10 percent of the value of the contract.

Case Study 2: OPO found no merit

The Complaint:

- Complaint from a supplier (the Complainant) regarding a contract for hotel accommodations in Europe.
- Contract valued below the \$121,200 threshold.

The complaint raised the following two issues:

- Was contract wrongfully awarded based on an erroneous interpretation of one of the mandatory criteria in the solicitation?
- Was department obligated to provide the Complainant a debriefing and disclose key attributes of the winning bid?

Case Study 2 *(continued)*

Facts:

- RFP's basis of selection → Responsive bidder with the lowest evaluated price.
- Requirement that the proposed hotel be within 1,500 m of a specific location.
- Solicitation did not specify the method of measuring distance (e.g., walking? driving? straight line/ as the crow flies?).

Findings:

- First: Contract was not wrongfully awarded; Contract was awarded in accordance with the basis of selection.
 - Method of evaluating a mandatory criteria (i.e., measuring distance) should have been more clearly defined, however: (a) all bids were evaluated consistently; (b) the Complainant failed to seek clarification and instead bid based on assumptions.
- Second, although no mandatory requirement to provide a debriefing (under TBCP), department provided the Complainant an adequate debriefing re: (a) its bid met the technical requirements; (b) its price was not the lowest; (c) name of winning bidder, contract value, and name of hotel.

Case Study 3: Importance of Clear Criteria

- **Criterion:** Bidder must demonstrate resource has a **high school diploma**
- **Facts:** Bidder submits resource's **undergraduate degree**
- **Evaluation:** Department determines bidder **did not** meet criterion
- **OPO Concluded:** Evaluation was correctly conducted
- **Takeaway:**
 - Evaluators correctly determined the Bidder failed to demonstrate that the mandatory criterion was met
 - Say what you mean and mean what you say; select words carefully

Top 10 Issues Raised by Stakeholders in 2022-23

- 1) Evaluation was incorrectly conducted/contract was awarded to wrong bidder
- 2) Evaluation criteria were unfair, overly restrictive or biased
- 3) Payment issues (late payment or department refused to pay)
- 4) Debriefings were not provided/info provided was insufficient
- 5) Department deviated from terms & conditions of contract
- 6) Department did not respond or responded late to questions
- 7) Department inappropriately used non-competitive contracting
- 8) The solicitation was either confusing, contradictory, and/or had vague information
- 9) The stakeholder was not invited to compete in the solicitation
- 10) The stakeholder is a holder of an SO/SA who is not getting business

Questions?

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- Email: ombudsman@opo-boa.gc.ca
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**15 years of promoting fairness, openness and
transparency in federal procurement**