

Office of the Procurement Ombud

The Evaluation of Diversity and Inclusion Criteria in Procurement Processes

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Agenda

- Who we are
- OPO and Diversifying the Federal Supply Chain
- Case Studies
- Lessons learned
- Questions?

Who We Are

- Neutral
- Independent
- Government-wide mandate

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

OPO and Diversifying the Federal Supply Chain

- **OPO's activities in Diversity and Inclusion in the Supply Chain**
 - Diversifying the Federal Supply Chain Summit.
 - Diversifying the Federal Supply Chain Mentoring.
 - Knowledge Deepening and Sharing x 2.
 - Procurement Practice Review.
 - Reviews of Complaint.

Case Studies

Case Study 1

Acquisition of Services of an Anti-Racism Consultant by Immigration, Refugees and Citizenship Canada (IRCC)

The Complaint

- Complaint regarding a contract for an anti-racism consultant with professional expertise in systemic bias.

Issues

- Was mandatory criterion M1, requiring a recognized degree in specific fields like HR or sociology, unreasonable?
- Was rated criterion R3, requiring bidders to demonstrate promotion of Anti-Racism and diversity within their organization, unreasonable?

Case Study 1 *(continued)*

Highlighted Concerns

M1 → The bidder must demonstrate that the proposed resource has obtained a university degree from a recognized university in human resources management, labour or industrial relations, psychology, public or business administration, organizational development, education sciences, social sciences, or sociology.

- **The problem:** It is unclear how these specific degrees relate to anti-racism and why it's mandatory/ indispensable.

R3 → The bidder had to demonstrate it promoted anti-racism and diversity through corporate planning and training activities within the organization.

- **The problem:** The Department recognized the importance of lived experience in the Statement of Work (SOW) but failed to include it in bid evaluation criteria.

Case Study 1 *(continued)*

Findings

- Requiring a university degree in the fields specified in M1 was unnecessary and unreasonable for an anti-racism consultant specializing in systemic bias.
- The rated criterion R3 was unreasonable since it was not aligned with the department's own stated preference for lived experience, and was written from the perspective of allyship.

Recommendation

- Policy-makers develop guidance and tools to help procurement officers create and measure diversity, equity, and inclusion criteria to support and promote historically underrepresented groups in the federal supply chain.

Case Study 2

Acquisition of Diversity and Inclusion Network Anti-Racism Training for Executives by the Canada Revenue Agency (CRA)

The Complaint

- Complaint regarding a contract for diversity and inclusion network anti-racism training for executives.

Issues

- Was the initial procurement process followed by the CRA prior to launching the competitive solicitation process wrongful?
- Was rated criterion R2, requiring the bidder to hold a professional certification in individual coaching, executive coaching, or an equivalent from an accredited organization, unreasonable?
- Did the CRA have to include a criterion requiring an instructor with lived experience from Black, Indigenous, or Métis communities?
- Was CRA required to include a validation mechanism to ensure diverse ownership of the successful bidder?

Case Study 2 *(continued)*

Highlighted Concerns

1. CRA discussed the service scope and pricing with the complainant before finalizing the procurement strategy and cost estimate.

- **The problem:** It was no longer feasible to conduct a competitive process that would be fair to all potential suppliers.

2. Criterion R2 accounted for just 8% of the total score in the RFP's selection process.

- **To note:** Government institutions are allowed to establish technical requirements for their solicitations if these requirements accurately represent the legitimate operational needs of the procurement.

3. CRA did not consider lived experience and group membership as part of its technical evaluation of the bids.

- **To note:** Uncertainty exists around socio-economic criteria in procurement due to diversification initiatives. CRA didn't have to include lived experience in the SoW, but its handling needed more thought.

4. No requirement to validate that bidders qualified under the terms and conditions of a set aside program.

- **To note:** Since the solicitation was not issued under the Procurement Strategy for Indigenous Business (PSIB), there was no need to verify if bidders met the program's terms and conditions or if they were diverse-owned.

Case Study 2 *(continued)*

Findings

- CRA's initial procurement was wrongful and misleading, leading the complainant to expect a directed contract to be issued.
- R2's certification requirement was reasonable, reflecting valid needs achievable by bidders.
- CRA wasn't required to include an instructor with lived experience in the evaluation criteria, but could have, aligning with social procurement goals.
- The solicitation (a) did not have set-asides for Indigenous businesses, (b) lacked a mechanism for directing contracts to Black-owned businesses, and (c) did not require ensuring diverse ownership among bidders.

Recommendation

- The Government should create a framework to guide departments on implementing initiatives to diversify the federal supply chain.

Lessons Learned

1. Due Diligence and Planning

- Ensure policies and initiatives are integrated into every procurement.
- Inform clients/ program managers that early procurement engagement reduces the risk of mistakes and ensures a solid procurement strategy and process that meets all requirements.
- Use your authority to extend or re-tender the procurement if more time is needed to address concerns.

2. Internal Diversity and Inclusion (D&I) Specialist

- Consult the D&I procurement subject matter experts within federal departments and agencies.
- Contribute to, and leverage, repositories on clauses related to your commodity.
- Ensure your decision-making is well supported and justified by underlying evidence.

3. Check Your Biases

- Use clear, measurable, and achievable criteria to avoid ambiguity, such as referencing subjective terms like “lived experience”.
- Recognize that there are gaps in our knowledge and that we might not be the best qualified to identify the barriers.
- Take D&I training and consult with colleagues who are better positioned to identify barriers.
- Ensure evaluation criteria do not inadvertently disadvantage historically marginalized bidders by prioritizing other attributes like allyship promotion.

4. Document Justification

- Document the detailed justification and approval for chosen criteria.

5. Mandatory Education Criteria

- Consider revising the mandatory education criterion to broaden eligibility and increase participation.
- Determine whether the education criterion is essential to the deliverable or rooted in “old ways” of thinking.
- To foster inclusion, consider making education a “rated criterion”.

Questions?

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