



Things That Make You Go Hmmm: Tales from the Office of the Procurement Ombudsman

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Office of the Procurement
Ombudsman

Bureau de l'ombudsman
de l'approvisionnement

Canada 

Office of the Procurement Ombudsman

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



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	<p>#1 -- A mandatory criterion requesting the membership to a professional association for [the services].</p> <p>#2 -- Was the Complainant's proposal found non-responsive because the Department's interpretation of Mandatory Criterion M1 was overly restrictive?</p>

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

According to Supplier	<p>Supplier questions:</p> <ul style="list-style-type: none">• 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	<p>Membership to a professional association... « is to foster and encourage professionalism, ethical conduct and ongoing development in the industry. »</p> <p>« provides technical assistance, advice and supports member training. »</p>

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

Case Study #2

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

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 Department	<p>Given that the level of effort presented is substantially inadequate, the proposed phases, schedule and Start/Finish of the contract are adversely affected.</p> <p>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.</p>

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

According to Supplier	<p>The benchmark used by [the Department] of 55-65 days appears to be an undisclosed evaluation criteria.</p> <p>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.</p>
Response from Department	<p>The project authority's knowledge of how much effort this could take does not qualify as a “secret criterion” that would be unanticipated by qualified bidders.</p>

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	<p>[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.</p> <p>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.</p>
Response from Department	<p>Determined that the supplier's proposed level of effort of 40 days was insufficient</p> <p>« 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...»</p>

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



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