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Office of the Procurement Ombudsman

Knowledge Deepening and Sharing

Low Dollar Value Contracting and Dispute Resolution in Vendor Performance Management

CIPMM, November 27, 2019

Alexander Jeglic - Procurement Ombudsman

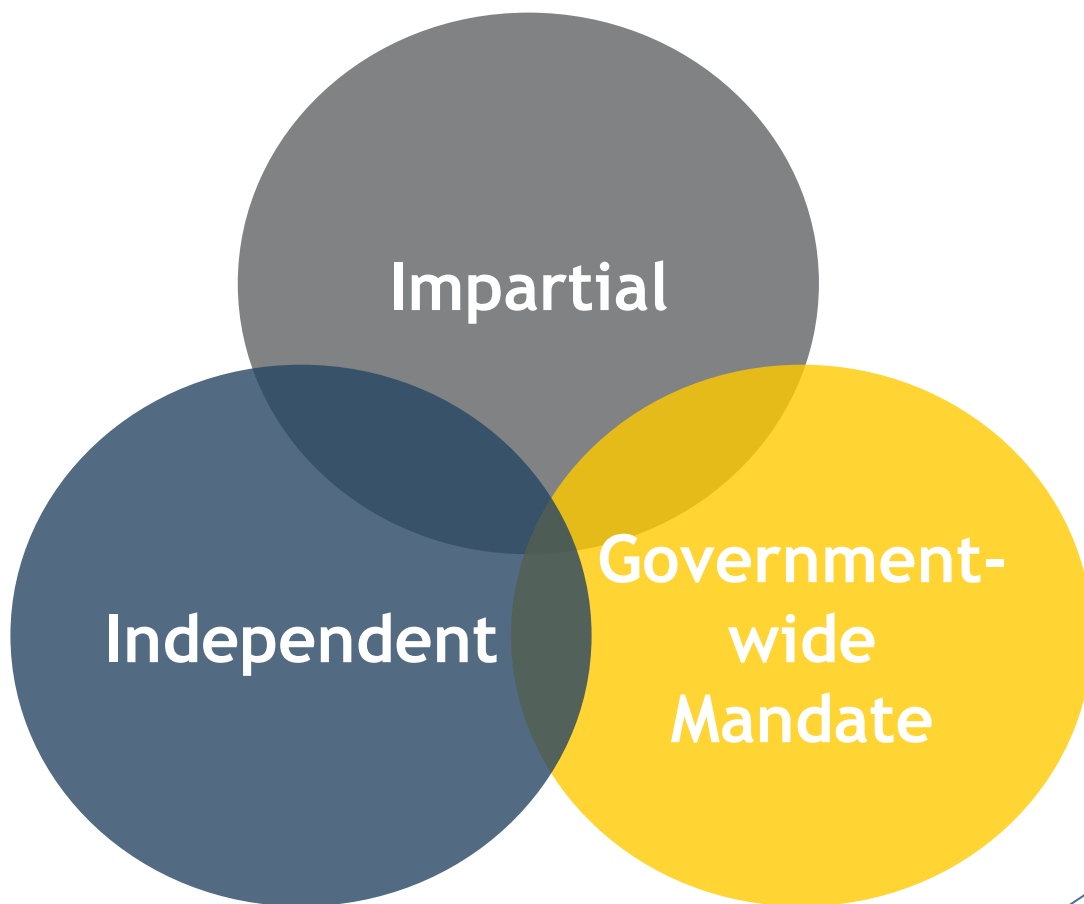
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Office of the Procurement Ombudsman (OPO)





Office of the Procurement Ombudsman (OPO)

What We Do

- ▶ Review supplier complaints
- ▶ Provide dispute resolution services
- ▶ Review procurement practices



Knowledge Deepening and Sharing (KDS)

- ▶ More comprehensive understanding of recurring issues in procurement
- ▶ Help resolve issues before they turn into complaints
- ▶ Improve federal procurement by sharing useful information
- ▶ Two KDS studies:
 1. Low Dollar Value Contracting (LDV)
 2. Dispute Resolution Mechanisms in Vendor Performance Management (VPM)



Low Dollar Value (LDV) Contracting

- ▶ LDV = below \$25,000 for goods and \$40,000 for services
- ▶ Approx. 92% of all federal contracts are below \$25,000
- ▶ Often conducted by non-specialists → elevated risk
- ▶ Little guidance specific to LDV contracting

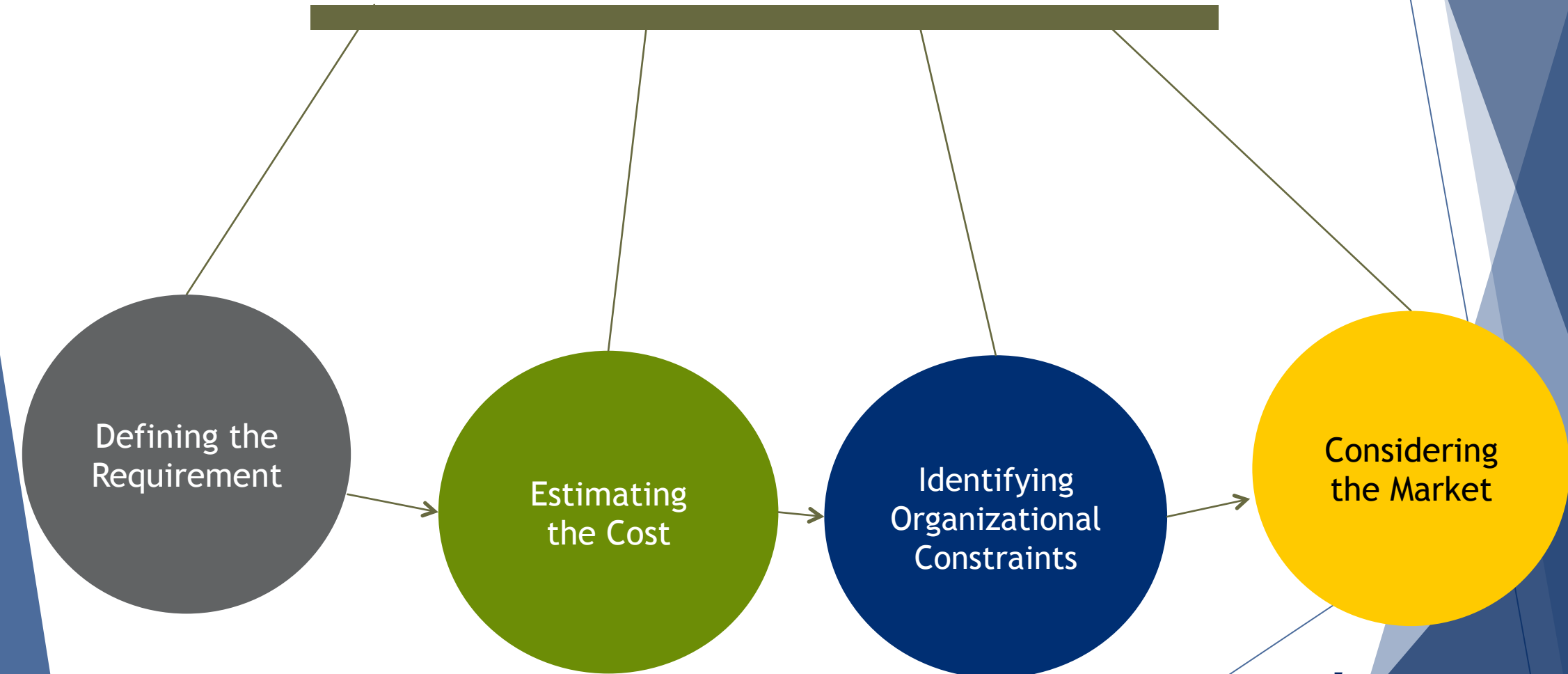


Purpose of the LDV Study

- ▶ What makes LDV contracting unique?
- ▶ When does it make sense to compete or direct a LDV contract?
- ▶ Provide guidance to the individuals engaged in LDV contracting.



Key Considerations in Awarding LDV Contracts





Social Procurement

- ▶ Using procurement to achieve strategic social, economic and workforce objectives
- ▶ Flexibility to direct LDV contracts creates unique opportunity for underrepresented groups
- ▶ Key challenge: absence of formal policy



Questions on LDV Contracting

- ▶ How is LDV contracting governed in your organization?
- ▶ Is guidance appropriately aligned with buyers' knowledge and experience?
- ▶ Does the cost of competing LDV contracts outweigh the benefits?



Dispute Resolution Mechanisms in Vendor Performance Management (VPM)

- ▶ VPM = monitoring, evaluating and reporting on vendor's performance against contract requirements
- ▶ Rating system based on pre-defined performance indicators
- ▶ Purpose of the VPM study:
 - Examine various dispute resolution mechanisms
 - Determine if VPM frameworks should include dispute resolution mechanisms



Vendor Performance Management in Canada

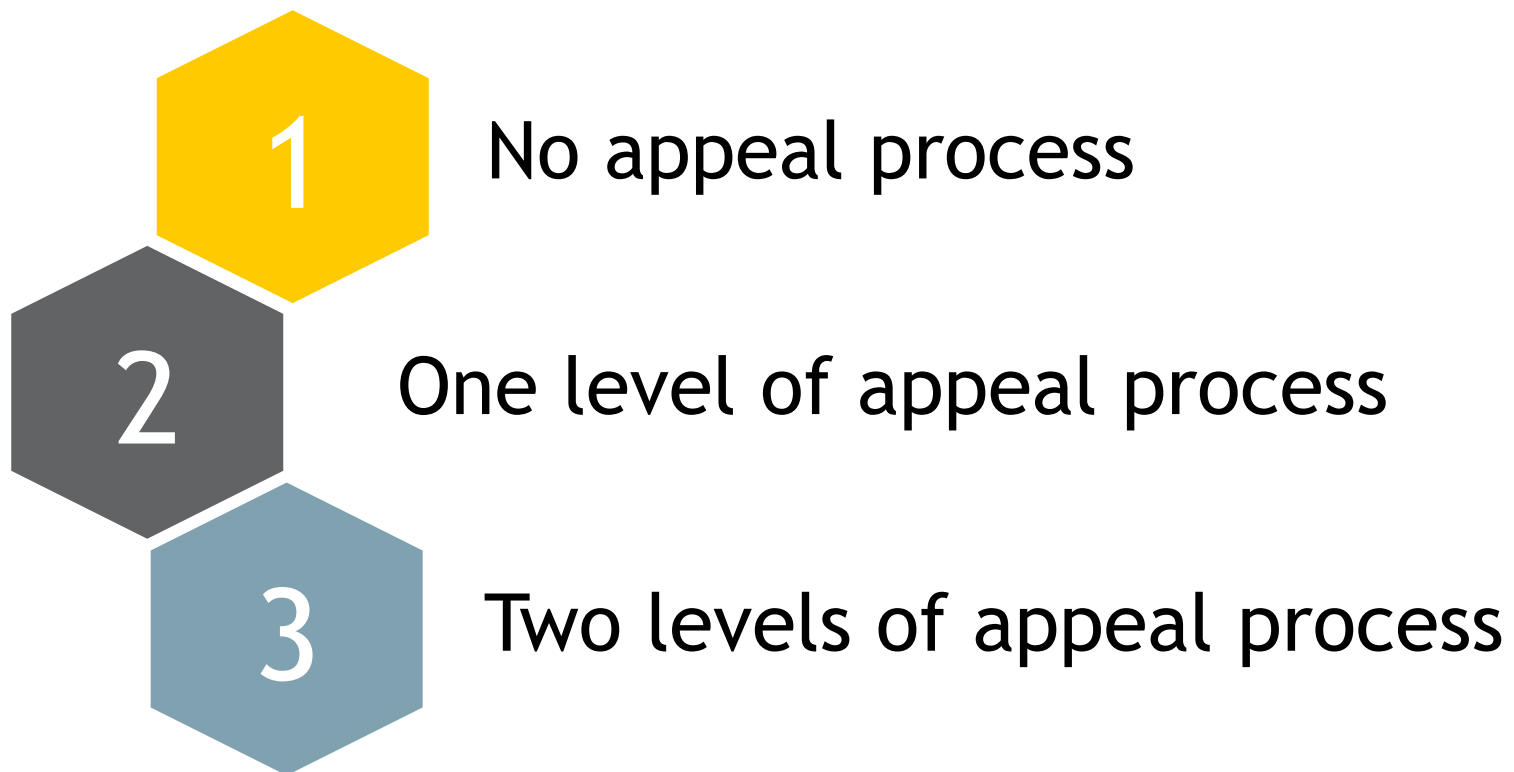
- ▶ No common GoC policy or approach
- ▶ PSPC working on VPM framework to incentivize good performance and dis-incentivize poor performance
- ▶ PSPC's 2011 Vendor Performance Corrective Measure Policy enables “debarment” and “conditions”



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Types of Dispute Resolution Frameworks





One Level of Appeal Process

- ▶ Common in provinces and municipalities
- ▶ Negotiation between supplier and organization
- ▶ Pro: Appeal authority not involved in dispute
- ▶ Con: Process is “in house” - not always impartial



Two Levels of Appeal Process

- ▶ Second appeal can be internal or third-party
- ▶ Pro: Independent third party provides “impartiality”
- ▶ Con: Enhanced administrative burden; time-consuming process
- ▶ Second appeal can be mediation or arbitration



Considerations

- ▶ Interim vs Final Rating
- ▶ Application Fees
- ▶ Deference
- ▶ Processing Time



Questions

- ▶ Does your organization have a VPM regime in place?
- ▶ Should vendors have the opportunity to rate the purchaser?
- ▶ Should ratings be subject to an appeal mechanism?
- ▶ Should there be one or two levels of appeal?
- ▶ Should the appeal authority be internal or third-party?
- ▶ Should the appeal process be binding (arbitration) or non-binding (mediation)?



Conclusions

- ▶ Due to adverse impacts, there should be an appeal process.
- ▶ One level of appeal is preferable to none at all.
- ▶ Arbitration at second-level appeal is beneficial as it provides closure.
- ▶ Consider refunding application fees when appeal is validated.



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in federal procurement since 2008**