



Office of the Procurement
Ombudsman

Bureau de l'ombudsman
de l'approvisionnement

A background image of a city skyline, likely Toronto, with various skyscrapers and buildings. The image is overlaid with a gradient that transitions from purple on the left to orange on the right.

ANNUAL REPORT

2015-2016

A background image of a city skyline, likely Toronto, with various skyscrapers and buildings. The image is overlaid with a gradient that transitions from purple on the left to orange on the right.

OFFICE OF THE PROCUREMENT OMBUDSMAN

Promoting Fairness, Openness and Transparency
in Federal Procurement

Canada 

OFFICE OF THE PROCUREMENT OMBUDSMAN

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THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT

Dear Minister,

Pursuant to paragraph 22.3(1) of the *Department of Public Works and Government Services Act*, it is an honour and a pleasure to submit the Procurement Ombudsman Annual Report for the 2015–2016 fiscal year.


Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lorenzo Ieraci', with a stylized flourish extending to the left.

Lorenzo Ieraci
Interim Procurement Ombudsman
Ottawa, July 2016

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“ ...we will continue to be guided by our “we are here to help” motto and our simple, but important, mission: to promote fairness, openness and transparency in federal procurement ”

1 MESSAGE FROM THE INTERIM PROCUREMENT OMBUDSMAN



“What’s a Procurement Ombudsman?”

That is the question I am almost always asked when I tell people I work at the Office of the Procurement Ombudsman. When I first joined the Office more than four years ago I would provide a detailed response, going to great lengths to

define “procurement” and explain the concept of “an ombudsman”. Usually the reaction I received was blank stares.

Over the years I’ve simplified my response to explain that an ombudsman helps bridge gaps that sometimes develop between citizens and institutions. In the case of this Office, we try to bridge gaps that sometimes materialize between Canadian suppliers and federal organizations.

The previous Procurement Ombudsman retired in December 2015 and for the rest of the fiscal year the Office was without an Ombudsman. While this imposed limits on the Office’s mandated activities, we remained focused on trying to help and we achieved a number of milestones. I am honored to have been appointed, effective May 9, 2016, to lead this valued and trusted organization as the Interim Procurement Ombudsman.

Key milestones

In 2015-2016, the Office registered the highest number of requests for Alternative Dispute Resolution (ADR) services. One of those requests was from a federal organization, making it the first time our services have been requested by someone other than a supplier. Throughout the fiscal year, we successfully helped resolve disputes in all instances where both parties agreed to participate in our ADR process.

As well in a number of other cases, we were able to facilitate a resolution even before the launch of our formal ADR process.

In addition, our Office recorded the highest number of procurement-related written complaints in one fiscal year. Of those, eight written complaints met the requirements of the *Procurement Ombudsman Regulations* (Regulations) and reviews were launched. Seven review of complaint reports were issued in 2015-2016. The number of reviews launched and reports completed both represent high-water marks for this Office. One of the reviews completed examined a complaint from a supplier regarding the administration of a contract, and the associated report was the first completed by this Office on such a complaint.

We are here to help

In most instances, we were able to help find solutions to the issues raised by suppliers through collaboration from federal organizations. The Office’s ability to resolve issues is affected by a number of factors, not the least of which is the willingness of suppliers and federal organizations to be part of the solution. What has become apparent to me in helping to resolve procurement-related issues is that it isn’t necessarily the information we provide, since the information has usually already been provided by federal organizations to suppliers or vice-versa. What matters is having an independent group (our Office) that can act as a “go between” for suppliers and federal organizations. I’ve found that it is often not a case of what is being said but who is saying it that makes the difference, and our Office is uniquely positioned to make a positive difference when issues arise between suppliers and federal organizations.



In addition, for all procurement-related written complaints, the Office ensured the supplier's concerns were raised to the senior-most decision-makers in the federal organizations in question. Moreover, these complaints were assessed to identify potential risks to the fairness, openness and transparency of the procurement process. When such potential risks were identified, in addition to noting them for potential future procurement practice reviews, we brought the risks to the attention of the head of the federal organization in question.

What I heard

In 2015-2016, with the exception of during the federal election period, the Office continued outreach activities to speak with Canadian suppliers and federal officials from coast to coast to obtain their views on federal procurement. This report outlines the most common feedback received and, while the areas of concern have generally remained the same since the Office opened in 2008, there were two issues I heard at outreach events more prominently in 2015-2016 than in previous years: frustration on the part of new companies trying to sell to federal organizations, and concerns from sub-contractors related to the procurement activities of prime contractors.

Numerous suppliers shared with me their frustrations as new companies trying to obtain contracts from federal organizations. These suppliers lamented "the federal contracting system" makes it particularly difficult for companies that have recently been established by often requiring the company (and not necessarily the individuals working for the company) to have prior experience, and sometimes specifically requiring experience in providing goods or services to federal organizations. As new companies trying to establish themselves, suppliers expressed frustration that these requirements disadvantaged new entrants in the market. Coupled with concerns regarding obtaining security clearances, challenges in getting listed on pre-qualified procurement vehicles, and other perceived impediments, these suppliers held the view that selling to federal organizations as a new company is an uphill battle. Interestingly, similar concerns were also shared with me by suppliers working for more established companies trying to obtain their first federal contract.

I was also struck by the increased frequency of Canadian suppliers raising concerns regarding the procurement practices of prime contractors. In the examples shared with me during outreach events, suppliers stated the prime contractors ("prime" since

they have the primary contract with a federal organization) were all large companies who had been awarded multi-million dollar contracts by federal organizations. To complete the work required under these high value contracts, prime contractors sub-contract part of work, often to smaller companies. Suppliers informed me of their concerns regarding delays in obtaining payment from the prime contractor for work completed, sometimes due to delays in the prime contractor being paid by the federal organization, or sub-contracts being awarded in ways that would be considered unacceptable if done by federal organizations. As one supplier told me in Ottawa “these companies are spending taxpayers’ money – they should have to follow the same rules [as federal organizations] so that they don’t just give [sub-]contracts to their buddies”. This particular supplier was disappointed to hear of the constraints our Office has in trying to deal with these types of issues. The Regulations require that, to provide our ADR services, one party to the contract must be a federal organization. Similarly, the Regulations require that our reviews into the award or administration of contracts involve contracts issued by federal organizations. If my experience this year is indicative of the overall level of concern within the broader supplier community, I expect concerns from sub-contractors will continue to be raised to this Office, and we will therefore continue to monitor them.

It’s all about communication

My experience with this Office has reinforced the fact that a breakdown in communication is often the cause of, or the key contributing factor to, issues between suppliers and federal organizations. When issues arise, I have found they are often due to a misunderstanding between the parties (frequently due to different rules that apply to sellers in the private sector and buyers in the public sector) and usually exacerbated due to a lack of communication (typically on the part of federal organizations). In most instances, a neutral party – namely our Office – can help re-establish lines of communications and clear up misunderstandings.

Some of these breakdowns may be due to capacity challenges that appear to exist in some federal organizations. During outreach events, I often heard from federal officials that they simply don’t have the

time, or sufficient staff, to return all the emails and phone calls they receive from suppliers regarding procurement. This is usually the start of the breakdown in communications and the development or exacerbation of issues between suppliers and federal organizations. Some suppliers echoed the views of federal officials, expressing their concerns that some federal organizations simply don’t have sufficient staff, or don’t have the staff with sufficient experience, expertise or knowledge of a particular industry, to successfully undertake all procurements.

A potential solution to some of the procurement-related concerns raised to me, and this Office’s attention, may therefore be for federal organizations to ensure they have sufficient staff, in both program and procurement areas, and to provide them with the tools, training, guidance and mentoring necessary to ensure they are successful in dealing with the challenges inherent in federal procurement.

Moving forward

The words “we are here to help” have become more than just a motto for this Office. They have become deeply ingrained in this Office’s culture and our day-to-day operations. As a result, the motto is evidenced in everything we do, from the respect afforded all who contact our Office (regardless of whether the subject is related to procurement or not), to the genuine interest in helping to resolve contractual disputes between suppliers and federal organizations, to the discipline and thoroughness exhibited in undertaking our reviews.

As we move into 2016-2017, we will continue to be guided by our “we are here to help” motto and our simple, but important, mission: to promote fairness, openness and transparency in federal procurement.



Lorenzo Ieraci
Interim Procurement Ombudsman

2

THE OFFICE OF THE PROCUREMENT OMBUDSMAN OUR YEAR AT A GLANCE

“WE ARE HERE TO HELP!”

52

Number of written requests received – the most since the Office opened.

13

Number of Alternative Dispute Resolution requests – the most since the Office opened.

7

Number of Review of Complaint reports issued – the most in one fiscal year.

1st

Review of Complaint on the administration of a contract.

“ Although my complaint was outside the Ombudsman’s mandate, [the Office] was still able to resolve the issue by working with [the federal organization] directly. ”

– Supplier feedback

IT’S ALL ABOUT COMMUNICATION!

“Your seminar was truly helpful. I would recommend to all.”

– Supplier feedback

The Office met with suppliers at 30 town hall meetings across the country!

74153

Number of page views on OPO’s website.

825

Number of suppliers registered for OPO’s town hall meetings nationwide.

283

Number of procurement-related contacts to the Office.

“ The Office of the Procurement Ombudsman is an essential government service. The [Office] should be expanded and empowered. ”

– Supplier feedback

DID YOU KNOW?

An ombudsman is an “independent, objective investigator of people’s complaints against government and/or private sector organizations”.

The Procurement Ombudsman is one of 14 ombudsmen for Canadian federal organizations.

(Forum of Canadian Ombudsmen)

3 WE ARE HERE TO HELP

In any given year, hundreds of thousands of contracts are entered into by federal organizations and Canadian businesses that supply them with goods and/or services. When one considers this large volume of procurement activity, the significant amounts spent by federal organizations (about \$18 billion total annually), the more than 100 federal organizations involved in procurement, and the vast set of rules that make doing business with federal organizations different from doing business in the private sector, it is not surprising that issues occasionally arise. This is where the Office of the Procurement Ombudsman (OPO/the Office) comes in.

The Office was created to promote fairness, openness and transparency in federal procurement. OPO is neither a lobbyist for suppliers nor an apologist for federal organizations. To help suppliers and federal organizations sort through the issues that arise in the competitive, and often complicated, world of federal procurement, the Office uses its position as a neutral organization to encourage open communication and the sharing of effective practices among all parties.

Our motto is simple: “We are here to help”. The Office is committed to ensuring everyone who contacts the Office receives personalized service and prompt responses to questions raised. Whether the Office is clarifying an aspect of procurement, stimulating a more productive dialogue between a supplier and a federal organization, or undertaking an in-depth review of federal procurement practices, we are committed to helping and to promoting fairness, openness and transparency in federal procurement.

OUR MISSION

To promote fairness, openness and transparency in federal government procurement.

OUR MANDATE

The *Department of Public Works and Government Services Act* provides the authorities for the Procurement Ombudsman to exercise his mandate as follows:

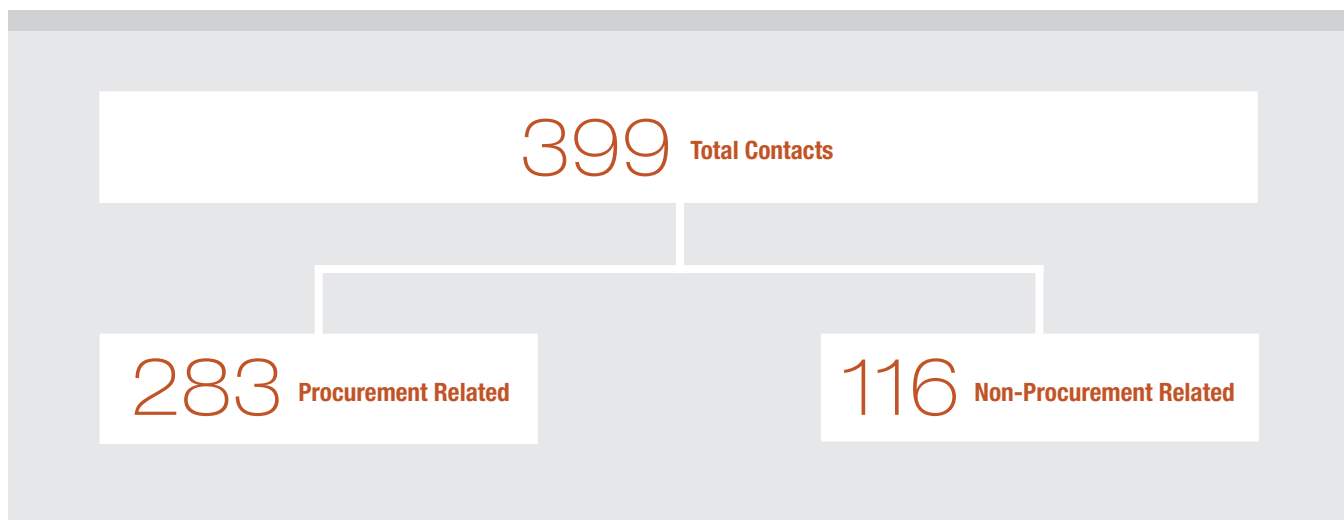
- Review complaints with respect to the award of a contract for the acquisition of goods below \$25,000 and services below \$100,000 (including taxes);
- Review complaints with respect to the administration of a contract, regardless of dollar value;
- Review the practices of departments for acquiring goods and services to assess their fairness, openness and transparency and make recommendations to improve those practices; and
- Ensure that an alternative dispute resolution process is provided, if requested and agreed to by both parties to a federal contract.

OPO VALUES

OPO employees are guided in their work and their professional conduct by committing to the values of respect, impartiality, professionalism and transparency.



4 PROFILE OF CONTACTS



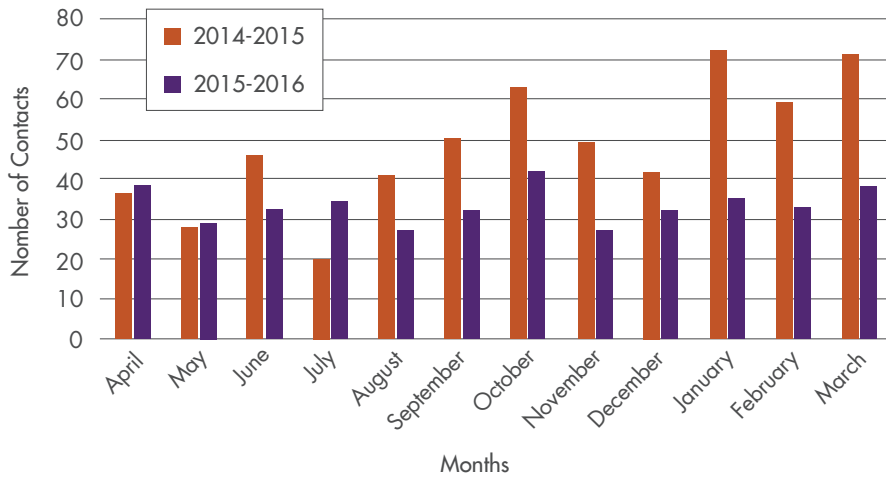
In 2015-2016 the Office registered a total of 399 contacts. This represented a decrease of 31% from the previous year, from 577 total contacts in 2014-2015 to 399 in 2015-2016. The *Comparison in Total Monthly Contacts* chart (page 9) shows a decrease in the number of contacts to the Office starting in August and continuing to the end of the fiscal year. Potential reasons for the decline in total contacts include:

- The 2015 election period (August-October) resulted in the Office postponing supplier-related outreach events and advertising activities until after the election.
- The number of solicitations issued or federal contracts awarded may have been affected by the election period.
- The period without an Ombudsman limited some of the functions the Office could undertake between December 2015 and the end of the fiscal year.

Of the 399 contacts, 283 (71%) contacts were procurement-related, ranging from general inquiries to specific complaints. While the number of overall contacts decreased from the previous fiscal year, the percentage of procurement-related contacts remained steady. The rest of this report provides details on how the Office handled these 283 procurement-related contacts.

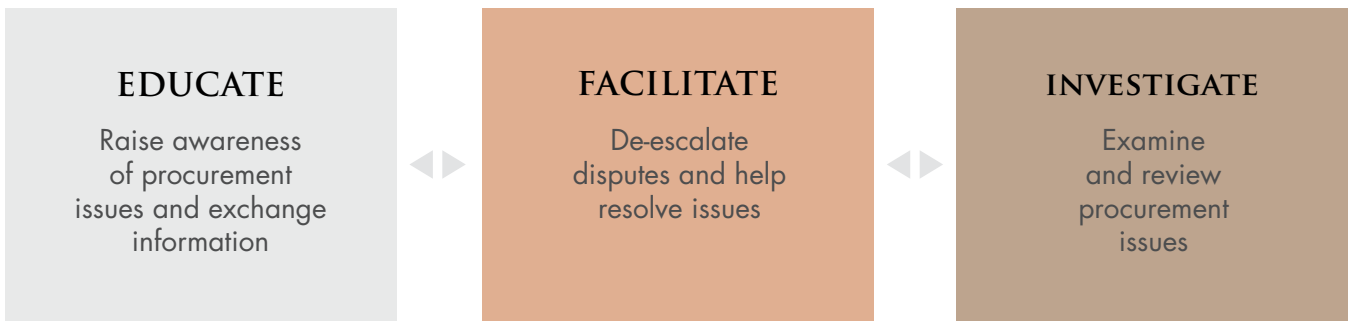
The remaining 116 (29%) contacts were non-procurement related and consisted of inquiries from members of the general public attempting to reach a government organization, experiencing difficulty with a government program and not knowing where to turn, or raising concerns that fall within the expertise and mandate of other governmental organizations. Regardless of the nature of the non-procurement issues raised, OPO staff worked diligently to provide useful information to re-direct individuals who contacted the Office.

COMPARISON IN TOTAL MONTHLY CONTACTS 2014-2015/2015-2016



EDUCATE, FACILITATE AND INVESTIGATE

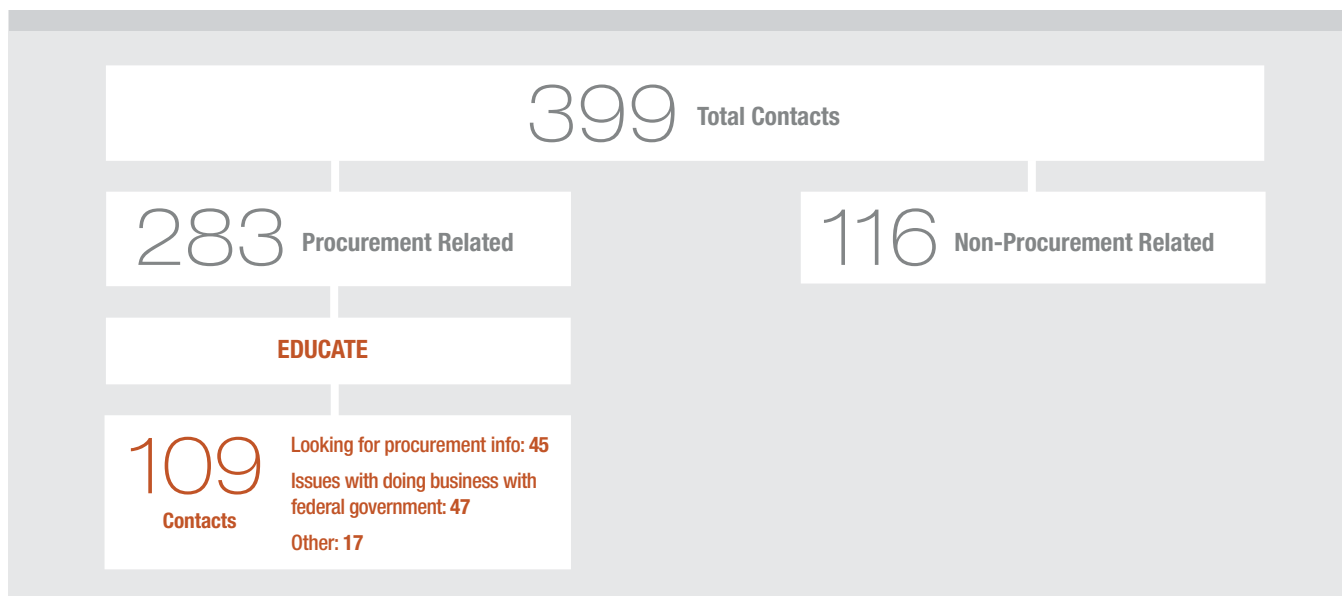
Our approach to promoting fairness, openness and transparency in federal procurement focuses on three pillars:



These three pillars — Educate, Facilitate and Investigate — provide the structure for understanding OPO’s activities and how the Office handled the 283 procurement-related contacts in 2015-2016.

5 EDUCATE





RAISING AWARENESS AND SHARING INFORMATION

OPO regards its Educate pillar as a two-way street. On the one-hand, the 283 procurement-related contacts and information we gathered through our outreach events provide the Office with an invaluable source of procurement-related information, which allows for the monitoring of issues and identification of trends and developments. On the other hand, it allows OPO to provide information to suppliers and federal organizations that can help respond to questions or resolve issues.

WHAT WE DID TO RESPOND TO PROCUREMENT QUESTIONS AND INQUIRIES

Of the 283 procurement-related contacts, OPO addressed 109 by providing information and responding to questions. Many of these 109 contacts were from suppliers looking for information to better understand the various procurement tools and processes used by federal organizations, while others raised concerns about doing business with federal

organizations. In addition, some of the contacts sought more details on the Office’s mandate and services.

Whether responding to telephone calls, emails, letters, faxes, online comments, or through face-to-face meetings with suppliers or federal officials, OPO sought to provide useful information to individuals and organizations in a timely, professional and courteous manner.

WHAT WE DID TO RAISE AWARENESS OF PROCUREMENT ISSUES AND EXCHANGE INFORMATION

In addition to addressing contacts to the Office, OPO expanded regional outreach activities to reach more small and medium businesses in Canada by hosting town hall-style meetings and information sessions, attending conferences and tradeshows, and increasing our social media presence. These efforts provided another means for OPO to hear from suppliers about their experience with federal procurement and to inform them about our mandate and services.

Additionally, the Office met with federal organizations, the purpose being two-fold: first to inform federal organizations of the procurement issues suppliers are bringing to our attention, and second to learn from federal officials about the procurement-related challenges they face. Further, these meetings provided the Office with the opportunity to remind federal officials of the services we offer and how we can help resolve procurement-related issues or disputes when they arise.

WHAT WE HEARD

The following are examples of what the Office heard from suppliers and federal officials during outreach events in 2015-2016:

Supplier feedback

- Cumbersome and burdensome solicitations, more specifically the amount of paperwork and time required to respond to solicitations, act as disincentives for suppliers.
- Short bidding periods make it difficult for suppliers to respond to the often extensive requirements in solicitations.
- Being required to provide costly samples, mock-ups or designs as part of bids is prohibitive, with some suppliers raising concerns these may be used by federal organizations to guide work that will be undertaken by competitors.
- Federal organizations are overly focused on lowest cost proposals, which may not provide best value.
- Communications barriers or challenges, including in obtaining debriefs from federal organizations on the shortcomings of unsuccessful bids after the award of contracts or concerns about a perceived lack of details provided through debriefs.

Feedback from federal officials

- Lack of capacity in some federal organizations, particularly in procurement, is challenging the ability of organizations to respond to demands and supplier inquiries.
- Centralizing procurement, within specific federal organizations or across federal organizations, may provide advantages as it would allow expertise to be located “in one place”.

INTERNATIONAL INTEREST

The Ombudsman was invited to speak at the GovProcure Conference in Sydney, Australia, illustrating a continued international interest in the fact that Canada has implemented an ombudsman specifically focused on procurement. At the Conference, the Procurement Ombudsman was able to learn about best procurement practices in other jurisdictions, and discuss alternative approaches being used internationally to resolve procurement concerns. Such international exchanges of information, in combination with domestic outreach events, are an important component in promoting improvements in the Canadian federal procurement system.

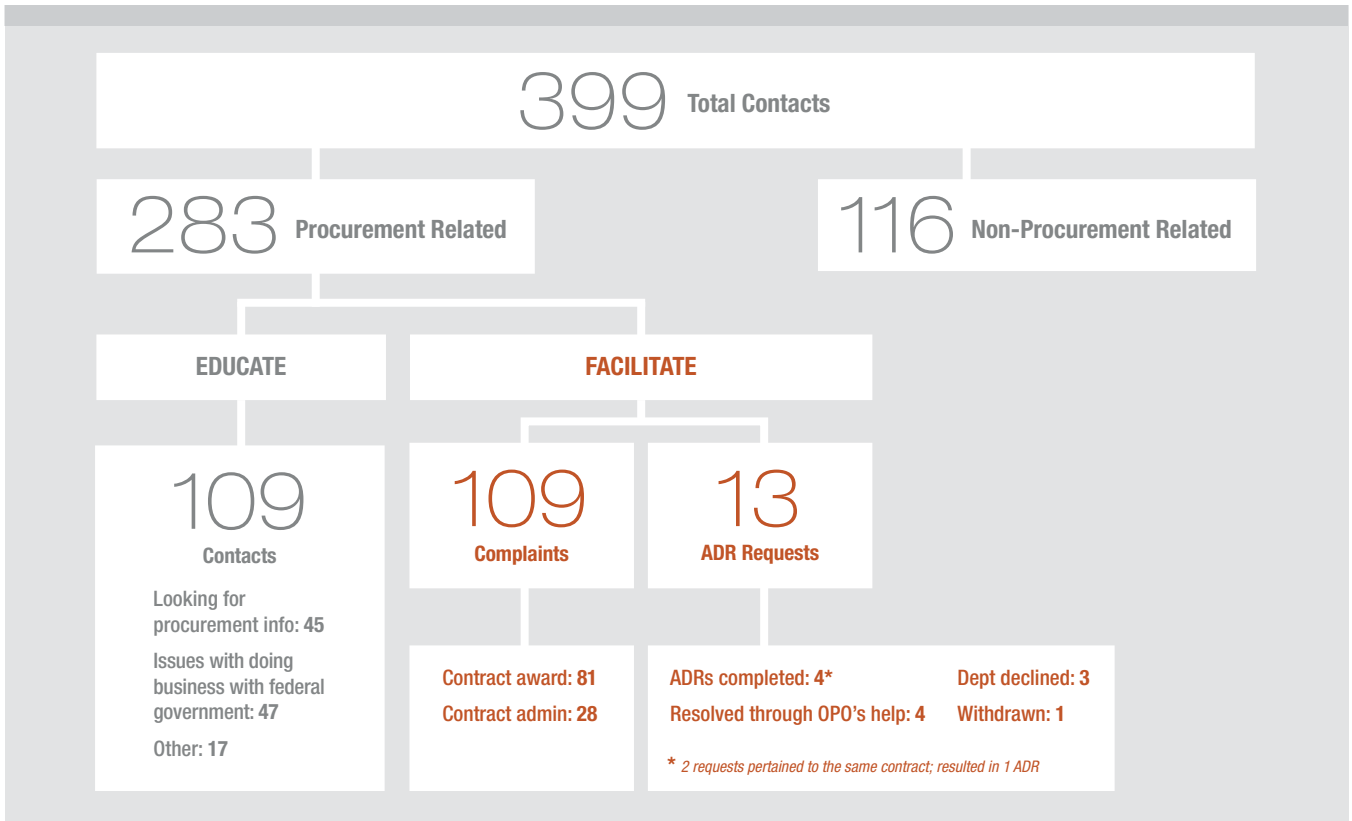
Shared feedback

While suppliers and federal organizations highlighted different areas of concern, there were also areas where views were similar or complementary, which included:

- Delays in launching procurements, or lengthy procurement processes, are resulting in increased costs for suppliers and federal organizations.
- Challenges related to the security clearance process:
 - Complexities associated with the process and length of time to obtain clearances;
 - Challenges in obtaining sponsors; and
 - Questions regarding requirements for finger printing and credit checks for certain types of clearances, and the potential impacts on timelines.

The more feedback the Office receives, the more we can help foster a greater understanding of procurement among all parties through the exchange of information. Where that does not prove to be enough, OPO will seek to facilitate the resolution of procurement issues. The following section outlines our activities under the Facilitate pillar.

6 FACILITATE



WHAT WE DID TO HELP RESOLVE ISSUES

Suppliers contacting OPO with issues are initially encouraged to provide the federal organization in question with the opportunity to resolve them before requesting our involvement as, in many cases, the issues can be resolved directly by the federal organization. In situations where a supplier has been unsuccessful in their attempts, or is dissatisfied with their interactions with the organization, the Office can assist by playing a “go between” role. This involves obtaining an in-depth understanding of the supplier’s issues and contacting the federal organization to discuss them. Once we have obtained the organization’s perspective, the information is relayed back to the supplier. This process is repeated as necessary and, in many cases, the Office succeeds in facilitating a resolution to the issues. In some cases,

we are able to re-establish communication between the supplier and the federal organization, enabling them to resolve the issues.

“ We believe that the intervention by OPO served as the catalyst to open dialogue and we are very appreciative. ”

– Supplier

Of the 283 procurement-related contacts OPO received in 2015-2016, 109 were complaints where the Office facilitated communications between the supplier and the federal organization. Examples of our ability to facilitate a resolution include:

- A supplier contacted OPO raising concerns about the rejection of its bid. Attempts by the supplier to obtain responses to questions, which would have clarified why the bid had been rejected, had been unsuccessful. The procurement officer was unable to answer the questions yet had refused to allow the supplier to discuss with the responsible program manager. OPO communicated with the department and was able to help the supplier obtain the responses it had been seeking.

- A supplier was unsuccessful in obtaining payment for an outstanding invoice. Having followed-up repeatedly with the federal organization, the response from departmental officials was always the same – “the payment is being processed”. The supplier, whose invoice was overdue by months, asked OPO to contact the organization. Through OPO’s intervention, the organization acknowledged the overdue invoice, and stated it was unclear how this particular invoice had been overlooked and not paid. The supplier was paid shortly thereafter.

It has become apparent that in playing this “go between” role, often it isn’t the information OPO provides as much as the recipient hearing it from a source that has no vested interest in the outcomes (other than helping resolve the issue). Consequently, the Office plays an important role in helping resolve procurement-related issues before they escalate.

HELPING PARTIES TO A CONTRACT

OPO received a request for Alternative Dispute Resolution (ADR) services from a supplier having a dispute with a federal organization about the interpretation of the terms and conditions of two contracts. The supplier had received only partial payment for invoices submitted. The organization contended the supplier had not properly completed the required work.

Both parties agreed to participate in OPO’s ADR process, however difficulties arose in scheduling the ADR session. OPO therefore facilitated productive communications between the two parties remotely. Through extensive back-and-forth between the supplier and the organization, OPO was able to help the parties find a resolution to the dispute.

OPO’s ADR services were praised by both parties, with the supplier commenting “Your patience and tenacity in dealing with the delays and length of trying to set up meetings and getting a conversation going with the other party, was a key factor to reach an agreement”.



HELPING PARTIES TO A CONTRACT RESOLVE DISPUTES

Of the 283 procurement-related contacts that OPO received in 2015-2016, 13 were written requests for alternative dispute resolution (ADR) services, a substantial increase from the 4 requests received in 2014-2015. In fact, this is the highest number of requests received in a fiscal year since OPO opened its doors in May 2008. Additionally, this was the first year that OPO's ADR services were requested by a federal organization.

The Office provides ADR services when disputes relating to the interpretation and application of the terms and conditions of a contract occur. One of the parties to the contract must request the service, whether the supplier or the federal organization. Both parties to the contract must agree to participate as it is a voluntary process. OPO's ADR services offer an opportunity for parties to come together in a neutral setting to participate in confidential, open and constructive dialogue. When both parties agree to participate, OPO's trained mediators have a successful track record of resolving disputes.

Of the 13 ADR requests received in 2015-2016:

- 5 requests resulted in 4 ADR processes that were successfully completed (including a contract where ADR requests were submitted, separately, by both the supplier and federal department and resulted in 1 ADR process).
- 4 requests were withdrawn by suppliers after OPO helped the parties reach a resolution prior to the launch of the formal ADR process.
- 3 supplier requests were declined by federal organizations.
- 1 request was withdrawn by the supplier, as the supplier filed a complaint regarding the administration of a contract.

The Office worked closely with suppliers and federal officials and, in all instances where there was cooperation from federal organizations, OPO was able to help the parties resolve the disputes.



7 INVESTIGATE

WHAT WE DID TO EXAMINE AND REVIEW PROCUREMENT ISSUES

Each written complaint received from a supplier about the award or administration of a federal contract is assessed against the *Procurement Ombudsman Regulations* (Regulations) to determine if a review must be launched. Once a review is launched, the Procurement Ombudsman is required to issue a report which includes findings and, where warranted, recommendations. In instances where the Ombudsman is unable to launch a review, the written complaints

are assessed to determine if there are any potential systemic issues or potential risks to fairness, openness or transparency. Where such issues or risks are identified, the Procurement Ombudsman may launch a procurement practice review to examine the procurement practices of federal organizations. This section outlines what the Office did to review procurement issues, beginning with reviewing supplier complaints.

399 Total Contacts

283 Procurement Related

116 Non-Procurement Related

EDUCATE

FACILITATE

INVESTIGATE

109 Contacts

Looking for procurement info: 45
Issues with doing business with federal government: 47
Other: 17

109 Complaints

Contract award: 81
Contract admin: 28

13 ADR Requests

ADRs completed: 4*
Resolved through OPO's help: 4
Dept declined: 3
Withdrawn: 1
* 2 requests pertained to the same contract; resulted in 1 ADR

52 Written Complaints

Contract award: 48
Contract administration: 4

44

Complaints did not meet regulatory criteria
Award: 38
Admin: 1
Withdrawn: 5

8

Complaints met regulatory criteria
Award: 7
Admin: 1

6

Reviews completed

Award: 5
Admin: 1

Two reviews carried-over to 2016-2017

One additional review launched in 2014-2015 was completed in 2015-2016

REVIEWING SUPPLIER COMPLAINTS

Suppliers who have concerns about the award or administration of a federal contract can file a written complaint with the Office. Once a written complaint has been received, the Procurement Ombudsman has 10 working days to make a determination on whether to undertake a review.

In making a determination, the Ombudsman is required to assess whether the complaint meets the requirements specified in the Regulations (see Table 1). If a complaint meets the regulatory criteria and it is determined to fall within the Procurement Ombudsman’s jurisdiction, the Ombudsman must launch a review.

Of the 52 written complaints filed with the Office, 48 (92%) pertained to the award of a contract while the remaining 4 (8%) pertained to the administration of a contract. Of these 52 complaints, 39 (75%) did not meet the criteria specified in the Regulations, while 5 were withdrawn. The remaining 8 complaints fell within the Procurement Ombudsman’s jurisdiction and reviews were launched.

For the period between December 21, 2015, and March 31, 2016, there was no Procurement Ombudsman meaning the Office did not have the authority to determine whether written complaints

met the regulatory criteria, to launch reviews of complaints, or to issue reports. Of the 52 written complaints, 13 were submitted in 2015-2016 during the period without an Ombudsman and therefore were held for decision. Once the Interim Procurement Ombudsman was appointed, effective May 9, 2016, decisions on all 13 written complaints were made within 10 working days of his appointment. Of these 13 written complaints, 2 met the criteria specified in the Regulations and reviews were launched. Reports on these two reviews will be issued in 2016-2017.

REVIEW OF COMPLAINT SUMMARIES

The following are summaries of the 7 reviews of complaints completed in 2015-2016, including one review which was carried forward from 2014-2015.

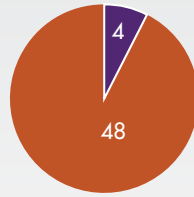
Poorly written solicitations can cause confusion for suppliers

A complaint was received regarding the award of a contract against a standing offer for Temporary Help Services. The Complainant raised three issues regarding: 1) the period of work; 2) the minimum mandatory qualifications for education; and 3) the federal organization’s communication during the solicitation period.

Table 1

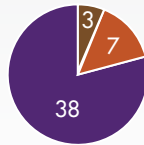
Criteria related to a complaint regarding the award of a contract include:	Criteria related to a complaint regarding the administration of a contract include:
<ul style="list-style-type: none"> • Complainant is a Canadian supplier. • Complaint is filed in writing, within prescribed timeframes. • Contract has been awarded. • Contract value is less than \$25,000 for goods or less than \$100,000 for services. • Federal organization falls under the jurisdiction of the Ombudsman. • Agreement on Internal Trade is applicable, except for dollar thresholds. • Facts or grounds of the complaint are not and have not been before the Canadian International Trade Tribunal or the courts. • Reasonable grounds exist to believe the contract was not awarded in accordance with the regulations made under the <i>Financial Administration Act</i>. 	<ul style="list-style-type: none"> • Complainant is a Canadian supplier. • Complaint is filed in writing, within prescribed timeframes. • Complainant must have been awarded the contract in question. • Complaint cannot be about the application or interpretation of the terms and conditions or about the scope of the work of the contract. <p style="text-align: right; margin-top: 20px;"> <i>For a complete list of criteria, please consult the Procurement Ombudsman Regulations on the OPO website.</i> </p>

2015-2016 WRITTEN COMPLAINTS



■ Award of a Contract
 ■ Administration of a Contract

AWARD OF A CONTRACT



■ Met Regulatory Criteria
■ Did Not Meet Regulatory Criteria
■ Withdrawn

ADMINISTRATION OF A CONTRACT



■ Met Regulatory Criteria
■ Did Not Meet Regulatory Criteria
■ Withdrawn

In reference to the first issue, the Complainant claimed the solicitation contained contradictory information regarding the period of work. The review determined the solicitation did contain contradictory elements, given it stated 6 weeks of work was required, yet the estimated start and end dates of the contract were less than 6 weeks apart.

Regarding the second issue, the Complainant claimed the solicitation contained questionable elements regarding the minimum mandatory qualifications for education. From the Complainant's perspective, the educational requirements were not relevant to the required service. However, the solicitation included the required minimum mandatory qualifications for education as prescribed by the standing offer. The review therefore did not validate this issue.

With respect to the third issue, the Complainant claimed it asked questions during the solicitation period to clarify the requirement and that no responses were provided. The federal organization acknowledged it did not respond to the Complainant's questions during the solicitation process.

While the review established two of the three issues raised by the Complainant had merit, an examination of the procurement process revealed the federal organization adhered to the procedures required by the standing offer and thus awarded the contract appropriately.

Was a supplier banned from bidding?

A complaint was received regarding the award of a contract for credit reporting services. The Complainant alleged it had been banned by a federal organization from bidding on the solicitation.

The review found that the federal organization had no basis to prevent the Complainant from bidding once it requested to be included in the procurement process. By not including the Complainant, the federal organization unjustifiably limited competition and in doing so did not adhere to the Treasury Board Contracting Policy requirement to provide equal opportunity for access to government business.

The review also found other issues with the procurement in question, including the use of undisclosed criteria to select the winning supplier. In doing so, the federal organization failed to adhere to the Treasury Board Contracting Policy and compromised the principles of fairness, openness and transparency.

As the federal organization prevented the Complainant from submitting a bid, the Ombudsman recommended the federal organization pay compensation to the Complainant. The Ombudsman also recommended the organization take the necessary steps to develop a procurement strategy for its ongoing requirement for credit reporting services.

The onus to demonstrate how a proposal meets the evaluation criteria rests with the supplier

A complaint was received regarding the award of a contract for professional services. The Complainant stated its proposal should have received one more point in the rated criteria and therefore should have been awarded the contract.

Given the scoring formula specified in the solicitation, the Complainant's assertion was correct in that it would have been awarded the contract had its proposal received one additional point. The Complainant contended its proposal fully demonstrated an experience criterion was met, and therefore should have received an additional point, whereas the federal organization found the Complainant's proposal failed to clearly demonstrate how it fully met the experience criterion.

The Regulations prevent the Ombudsman from substituting his opinion for the judgment of the organization unless there is insufficient written evidence to support that assessment or the assessment is unreasonable. The review found sufficient written evidence to support the assessment, and also found the assessment to be reasonable.

Additionally, documentation provided by the federal organization confirmed that all rated criteria were evaluated in a consistent manner across bids.

The Ombudsman concluded the federal organization followed the established rules and applicable legislation, policies and guidance, and evaluated all proposals fairly.

Organization properly awarded the contract, but may have unnecessarily limited the pool of potential suppliers

A complaint was received regarding the award of a contract for research and analysis services. The Complainant raised the following issues regarding the evaluation and selection criteria used by a federal organization in awarding the contract: 1) a mandatory insurance criterion was highly irregular for the work to be carried out; 2) a mandatory insurance criterion required at bid closing was discriminatory; 3) a point rated sub-criterion was irrelevant to the work to be carried out.

In regard to the first issue, jurisprudence has established that federal organizations have the discretion to define their procurement requirements to meet their operational needs. As the federal organization provided a rationale as to why it required bidders to possess insurance, there was no basis for the Ombudsman to question this requirement.

With reference to the second issue, by establishing insurance as a mandatory criterion to be in place at the time of bid closing, the federal organization was obligated to declare any bids not meeting this criterion as non-responsive. However, the Procurement Ombudsman noted that by requiring proof of insurance at the time of bid closing, rather than at the time of contract award, the federal organization may have unnecessarily limited the pool of potential suppliers.

In regards to the third issue, the federal organization demonstrated a link between the sub-criterion in question and the work to be performed. Therefore, the Ombudsman had no basis to question the relevancy of this requirement. However, the Procurement Ombudsman noted the organization could have provided more informative responses to the Complainant's questions, raised during the solicitation period, related to this issue.



The review found the issues raised by the Complainant did not have merit, and that the federal organization awarded the contract in a manner consistent with the evaluation and selection procedures stated in the solicitation.

Compensation recommended for a supplier whose proposal was improperly rejected

A complaint was received regarding the award of a contract for Temporary Help Services. The Complainant raised an issue regarding the evaluation of its bid, specifically the results of a reference check conducted as part of the evaluation process.

The review identified concerns with the reference check conducted by the federal organization. The Ombudsman could not determine the grounds on which the organization claimed the reference check did not confirm the experience of the Complainant's proposed worker.

The review further concluded that had the federal organization assessed the Complainant's bid in a manner consistent with its assessment of the successful supplier's bid, the Complainant's bid would have been deemed responsive and would have been awarded the contract.

Based on these findings, the Ombudsman recommended the federal organization pay compensation to the Complainant.

Mandatory security requirement questioned

A complaint was received regarding a contract awarded for the provision of risk assessment services. The Complainant raised the following issues: 1) the solicitation's security requirement did not allow a proposed resource (i.e. an individual) with a higher level personnel security clearance to do work on a contract for a company with lower level of security clearance; 2) the need for a bid to demonstrate a valid security clearance at bid closing was detrimental to small businesses; and 3) there was a lack of communication and advice provided by the federal organization.

With respect to the first issue, the solicitation's security requirement should not have prevented an individual cleared at a Secret (i.e. higher) level from doing work at a Reliability (i.e. lower) level for a company with Reliability level security clearance because a process was available for such situations. The process was to downgrade the individual's Secret level clearance to a Reliability level then duplicate the clearance so that it was held by the company submitting the individual. The Complainant was not informed of the correct process to modify security clearances.

For the second issue concerning the timing of the mandatory security requirement, jurisprudence has established that organizations have the discretion to define their procurement requirements to meet their operational needs. By establishing the security requirements as a mandatory evaluation criterion at bid closing, the federal organization was required to deem any bids not meeting this mandatory criterion as non-responsive. The Procurement Ombudsman noted that while the records provided by the organization for this review did not contain any indication that imposing a security requirement by bid closing was meant to intentionally disqualify any group, class, or size of businesses, by requiring security at bid closing the federal organization may have inadvertently deterred otherwise qualified suppliers from bidding.

For the third concern related to a lack of communication and advice, the review found communications were not timely and that the federal organization did not provide the proper advice to the Complainant.



While the review established merit on two of the three issues raised by the Complainant, an examination of the procurement process revealed the federal organization awarded the contract in accordance with the criteria in the solicitation. As such, the Ombudsman did not recommend compensation for the Complainant.

During the course of the review, the federal organization stated changes have been made to its procurement practices related to security requirements; if properly and fully implemented, these may help prevent situations like this from reoccurring in the future.

Were contractual obligations met by the federal organization?

A complaint was received regarding the administration of a contract for privacy impact assessment services. This was the first report issued by the Office related to the review of the administration of a contract.

The Complainant raised three issues that fell within the Ombudsman's mandate: 1) the federal organization did not respect its contractual obligations regarding payment and interest payment; 2) terminating the contract for default was not valid as the Complainant's work was delivered within timelines; and 3) the federal organization

did not provide comments on draft deliverables within required timelines. Other issues raised by the Complainant related to the application or interpretation of the terms and conditions of the contract, or to the scope of work of the contract; two areas that the Ombudsman is prohibited by the Regulations to examine as part of a review of complaint regarding the administration of a contract.

With regards to the first issue examined by the Ombudsman, during the course of the review the federal organization issued a payment and interest payment to the Complainant.

On the second issue, the federal organization was permitted, by the terms of the contract, to terminate the contract for convenience. However, in terminating the contract for convenience, the termination notice made a reference to “unsatisfactory” work which appears to have been the impetus for the issues that arose between the Complainant and the federal organization. The Complainant and the federal organization had divergent views regarding the quality of the Complainant’s deliverables. OPO was not provided any records that demonstrated the organization communicated concerns about the quality of the deliverables in writing to the Complainant prior to issuing the termination notice.

Regarding the third issue, the federal organization acknowledged it did not provide comments on draft documents within the time frames as required by the contract.

The Regulations prohibit the Ombudsman from providing a remedy other than as specified in the contract. Given the issues raised by the Complainant, the only remedy in the contract was payment, which the federal organization issued during the review. As such, the Ombudsman could not recommend any other remedy.

MOST COMMON PROCUREMENT-RELATED ISSUES

The Office assesses all written complaints to determine if they raise potential systemic issues as well as potential risks to fairness, openness or transparency. The potential issues and risks are tracked alongside issues raised through other procurement-related contacts to the Office.

In 2015-2016, the top 5 most common issues raised by suppliers through contacts to OPO were:

Most Common Procurement Related Issues 2015-2016
1. Evaluation and selection plans
2. Evaluation of bids
3. Procurement strategy
4. Payment
5. Statements of work

The following provides examples of the concerns raised within the top issues brought to OPO’s attention through procurement-related contacts and written complaints in 2015-2016:

1. Evaluation and selection plans: Concerns related to how winning bids were selected, more specifically regarding unfair, vague, or unclear evaluation criteria. In addition, suppliers raised concerns regarding:
 - a. The view that federal organizations are focused on lowest cost, but may not be obtaining value for money.
 - b. Concerns that evaluation criteria were restrictive:
 - i. Requiring suppliers to demonstrate they held security clearances at bid submission instead of at contract award or prior to work commencing.
 - ii. Evaluation criteria that appeared to favour a particular supplier, including the incumbent supplier or a group of suppliers.
2. Evaluation of bids: Concerns regarding how bids were evaluated were often raised to OPO, including:
 - a. Federal organizations were using criteria not specified in the solicitation (i.e. undisclosed criteria) to select the winning supplier.
 - b. Evaluation criteria were applied inconsistently or subjectively by federal organizations across bids, or contracts were awarded to non-responsive bids.

- c. Some federal organizations did not have sufficient subject-matter expertise to adequately understand and properly evaluate bids, particularly for specialized or highly technical goods or services.
3. Procurement strategy: The methods federal organizations used to obtain the goods or services they required were also subject to supplier concerns:
 - a. Standing offers and supply agreements were seen as difficult for small and medium-sized companies to respond to or qualify on, resulting in the view these favor large companies.
 - b. National solicitations for work to be done in the regions were viewed as encouraging large companies to obtain work that would otherwise go to “local” small and medium-sized companies.
 - c. The use of Advanced Contract Award Notice (ACANs) appeared inappropriate in instances where competing suppliers could provide the required goods or services, indicating to some suppliers that federal organizations were unfamiliar with their industry.
 4. Payment: Concerns related to the timing of payments by federal organizations or instances where payments were being withheld:
 - a. Payments by federal organizations were not occurring within the timeframes specified in contracts, even after work had been completed and invoiced.
 - b. Organizations requested work to be completed, often verbally, that was not part of contracts and thereafter refused to pay once the updated costs had been invoiced.
 5. Statements of work (SoW): Concerns in this area focused primarily on the requirements being biased or not aligning with the timeframes within which suppliers were expected to complete the work:
 - a. SoW appeared to favour a particular supplier or group of suppliers, often by being unnecessarily specific or restrictive.
 - b. SoW seemed to favour the previous or incumbent supplier, due to key information not being included in the solicitation and therefore only being known by the previous or incumbent supplier.



- c. The scope of the work was viewed as too big when compared to the timeframes within which suppliers were expected to complete the work.

Tracking the most common procurement-related concerns raised to our Office is important. Not only does it provide valuable information to support our Educate and Facilitate efforts, it also provides important data to help determine the topics for procurement practices reviews.

REVIEWING PROCUREMENT PRACTICES

The Regulations provide the Procurement Ombudsman with the authority to review the procurement practices of federal organizations when reasonable grounds exist. A procurement practice review (PPR) is an in-depth and objective review of the procurement practices used for acquiring goods and services. The Procurement Ombudsman assesses the fairness, openness and transparency of the organization's practices and may make recommendations for their improvement. To determine what topics to review, OPO assesses all the information gathered to identify potentially systemic issues as well as those posing

higher risks to fairness, openness or transparency. The Procurement Ombudsman can then launch PPRs in consequence to examine these specific issues.

The following are overviews of the two PPRs launched in 2015-2016, as well as a summary of the *Follow-up Report for the 2012-2013 Procurement Practice Reviews* completed in 2015-2016. The Regulations require that a PPR report be issued within one year from its commencement and, as such, the reports associated with the two PPRs launched in 2015-2016 will be published in 2016.

Review of processes used for the evaluation of bids

Combining the top two most common issues raised to OPO by suppliers in 2015-2016 and in two of the three preceding fiscal years, this review is examining: 1) the development of evaluation criteria; 2) the selection of the evaluation rating system; and 3) the choice of supplier selection method to determine the successful bid. The review is also examining whether bids were evaluated in a manner consistent with the criteria and selection methodology specified in solicitations. The objective of this review is to



determine whether organizations' bid evaluation processes are conducted in a manner consistent with applicable sections of the *Financial Administration Act* and regulations made under it, the Treasury Board Contracting Policy, and support the principles of fairness, openness and transparency.

Review of non-competitive contracting

Procurement strategy – in general terms, the approaches used by federal organizations to conduct their procurements – has consistently ranked as one of the top three most common issues raised by suppliers to OPO. Within Procurement strategy, non-competitive contracting was assessed by OPO as the topic with the highest potential risks. This review is examining: 1) the manner in which non-competitive contracts and non-competitive contract amendments were issued; and 2) whether contract splitting or retentive contracting were occurring for non-competitive contracts, and whether controls were in place to prevent these practices from occurring. The objective of this review is to determine whether non-competitive contracts and associated amendments are issued consistent with applicable sections of the *Financial Administration Act* and regulations made under it, the Treasury Board Contracting Policy, and support the principles of fairness, openness and transparency.

Follow-up review

Since the 2011-2012 fiscal year, the Office has conducted Follow-up reviews to determine what action federal organizations have taken in response to recommendations made in previous practice review reports. Follow-ups are important because they:

- Inform interested stakeholders of specific actions organizations have taken to improve procurement processes.

- Facilitate other federal organizations' ability to introduce similar improvements, where applicable, by sharing information on changes being implemented.
- Provide an indication of the usefulness of OPO's reviews in strengthening federal procurement practices.

In 2015-2016, one Follow-up review was completed for two reviews performed in 2012-2013, both involving the Canada School of Public Service (CSPS):

- *Review of Procurement Practices for the Acquisition of Temporary Help Services by the Canada School of Public Service*, originally published in March 2013.
- *Review of Procurement Practices for the Acquisition of Training Services by the Canada School of Public Service*, published in June 2012.

The CSPS response identified it had implemented a series of measures to improve its procurement practices, including the development of a functional procurement plan and the establishment of a Procurement Review Committee.

The Follow-up reviews undertaken by the Office during the past 5 fiscal years indicate the majority of recommendations were implemented by federal organizations and most planned actions were near completion. In all cases, OPO found federal organizations exhibited a commitment to improving their procurement practices.



8 APPENDIX

STATEMENT OF OPERATIONS FOR THE YEAR ENDED MARCH 31, 2016

Statement of Operations

EXPENSES	2015-2016
	(\$000)
Salaries and Employee Benefits	2,765
Professional Services	238
Operating Expenses	72
Information and Communication	63
Materials and Supplies	35
Corporate Services provided by PWGSC (See Note 3)	378
TOTAL	3,551

The following notes are an integral part of the Statement of Operations.

OFFICE OF THE PROCUREMENT OMBUDSMAN

Notes to the Statement of Operations for the year ended March 31, 2016

1. Authority and objective

The position of Procurement Ombudsman was established through amendments to the *Department of Public Works and Government Services Act*. The Procurement Ombudsman's mandate is further defined in the *Procurement Ombudsman Regulations*. The Office of the Procurement Ombudsman's mission is to promote fairness, openness and transparency in federal procurement.

2. Parliamentary authority

The funding approved by Treasury Board for the operation of the Office of the Procurement Ombudsman is part of Public Works and Government Services Canada's (PWGSC) appropriation, and consequently, the Office is subject to the legislative, regulatory and policy frameworks that govern PWGSC. Nonetheless, implicit in the nature and purpose of the Office is the need for OPO to fulfill its mandate in an independent fashion, and be seen to do so, by maintaining an arm's-length relationship with PWGSC.

3. Related party transactions

CORPORATE SERVICES PROVIDED BY PWGSC	(\$000)
Finance	92
Human Resources	87
Information Technology	187
Other	12
TOTAL	378

4. Comparative figures

EXPENSES	2015-16 (\$000)	2014-15 (\$000)
Salaries and Employee Benefits	2,765	2,861
Professional Services	238	303
Operating Expenses	72	75
Information and Communication	63	67
Materials and Supplies	35	35
Corporate Services provided by PWGSC	378	337
TOTAL	3,551	3,678