



OFFICE OF THE PROCUREMENT OMBUDSMAN



PROCUREMENT PRACTICE REVIEW

*REVIEW OF GOVERNMENT WIDE PROCUREMENT PRACTICES REGARDING
STANDING OFFERS AND SUPPLY ARRANGEMENTS*

OTTAWA

OCTOBER 2015

PROMOTING FAIRNESS OPENNESS AND TRANSPARENCY IN FEDERAL PROCUREMENT

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Introduction

Context

1. Paragraph 22.1(3)(a) of the *Department of Public Works and Government Services Act* provides the Procurement Ombudsman with the authority to review the practices of departments for acquiring materiel and services to assess their fairness, openness and transparency.

2. An analysis of complaints received by the Office of the Procurement Ombudsman (OPO) has identified several potential issues regarding the use of Standing Offers (SOs) and Supply Arrangements (SAs). These potential issues included:

- Failure to adhere to policy, guidance or instructions when awarding contracts against SOs or SAs, such as:
 - Unclear or generic statements of work;
 - Unclear evaluation or selection guidelines;
 - Using prices which were inconsistent with the SO or SA; and
 - Failure to notify unsuccessful firms of the contract award or failure to provide a debriefing when requested.

3. Issues were also identified through OPO's environmental scanning process, which considers all feedback provided to the office by suppliers and federal officials through outreach activities, and included:

- The perception that select suppliers were receiving a larger proportion of work;
- Procurement units were not always consulted when contracts were issued against SOs or SAs.
- Individuals who were issuing contracts against SOs or SAs without training or guidance; and
- The concern from suppliers that SO and SA feedback provided to government officials was not considered.

4. In fiscal year 2013-14, approximately 20% of contacts received by OPO were related to a SO or SA. Over the last two fiscal years, 5 of 9 complaints from suppliers related to the award of a call-up under a SO or a contract under a SA¹ and met the criteria for review as established in the *Procurement Ombudsman Regulations* (the Regulations) and were reviewed. In some instances, the review findings lead the Procurement Ombudsman to recommend compensation be paid to suppliers. More importantly, the findings revealed that in some instances, the SOs or SAs which were the subject of the review were open to interpretation and therefore susceptible to be used in unintended ways.

¹ For the purposes of this report, the term "contract" will be, unless otherwise specified, used to refer to both call-ups against a SO or a contract against a SA.

5. The contact analysis and review findings suggested issues might exist in the use of SOs and SAs. Accordingly, as required by subsection 4(1) of the Regulations, the Procurement Ombudsman determined there were reasonable grounds to review the use of SOs and SAs.

Background

6. SOs and SAs are two distinct methods of supply established to facilitate the procurement of frequently purchased goods and services by federal departments and agencies where demand is not known in advance. In theory, the use of SOs and SAs are intended to reduce paperwork, lower the cost of goods and services, expedite the procurement process and reduce the number of solicitations and contract negotiations.

Standing Offers

7. A SO is an agreement between the government and a qualified supplier to provide goods and/or services, as and when requested, at set prices and terms and conditions for a specific period of time. SOs are used, in part, to reduce the time and administration normally associated with typical procurement processes for the purchase of frequently needed goods or services.

8. A SO is not a contract and there are no obligations for the Government to purchase the goods or services specified in the SO. When a need is identified by an organization for a good or service available in an SO, the organization issues a contract to the SO qualified supplier. This contract is commonly referred to as a “call-up” against the SO. By using a SO, departments with a specific requirement do not have to carry out a full procurement process (development of a detailed statement of the requirement, bid evaluation criteria, evaluation of bids, etc.) with the cost and time implications. As long as the goods or services are available through a SO, departments can define details (such as quantity of goods, delivery date and delivery point) and issue a call-up through the predetermined allocation process individually established in each SO.

9. Since a SO is not a contract, qualifying on a SO does not provide guarantees of business to a supplier. Each supplier who qualifies on a SO is identified as an “SO holder.” SO’s provide the SO holder with an opportunity to offer goods or services to the federal government on a when and as required basis in a more streamlined and efficient manner than a typical procurement processes.

Supply Arrangements

10. An SA is an arrangement between the government and pre-qualified suppliers that allows an organization to compete among a pool of pre-qualified suppliers for a specific requirement within the scope of the SA. SAs are used to purchase goods and services that are not fully defined in advance or require further evaluation (eg. audit services).

11. A SA method of supply can be used when, on a regular basis, organizations require the same range of goods, services, or both, but these goods and services cannot be adequately defined at the outset and the actual demand is not known in advance. When departments have a specific requirement which is available through an SA, they must issue a second stage solicitation to some or all of the suppliers from the SA’s pre-qualified pool, using the selection methodology predetermined

in each SA. The price for the good or service is finalized during the second stage when the government accepts a pre-qualified supplier's proposal and signs a contract.

12. Since a SA is not a contract, pre-qualifying on a SA does not guarantee any level of business to a supplier.

13. All federal government departments and agencies defined in Schedule I, I.1 and II of the *Financial Administration Act* are required to buy commodities using mandatory SOs and SAs established by PWGSC.) The Treasury Board Contracting Policy (TBCP) identifies the mandatory use of standing offers for 10 commodity groups (i.e. goods and services) as follows:

- Clothing, Individual Equipment and Insignia;
- Communication, Detection, and Coherent Radiation Equipment;
- Fuels, Lubricants, Oils and Waxes;
- Furniture;
- General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment;
- Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles;
- Information Processing and Related Telecommunication Services;
- Office Machines, Text Processing Systems and Visible Record Equipment;
- Office Supplies and Devices; and
- Professional, Administrative and Management Support Services Sub-categories:
 - i. Professional Services;
 - ii. Administrative and Management Support Services; and
 - iii. Personnel Recruitment.

14. While PWGSC establishes the vast majority of SOs and SAs for use by federal departments and agencies, any federal organization with delegated contracting authority and with unique requirements can create its own SOs and SAs in addition to those available through PWGSC.

15. While SOs and SAs are two distinct methods of supply, for the purposes of this review they are sometimes referred to as "tools" or "procurement tools" interchangeably.

Review Objective and Criteria

16. The establishment of a SO or SA, in and of itself, does not result in the acquisition of any materiel or services. Therefore the Regulations prevent OPO from reviewing the practices of federal organizations in establishing SOs or SAs. However, as SOs and SAs are used by departments and agencies as a part of the process to award a contract, OPO can review whether contracts were awarded in compliance with the rules of the applicable SO or SA, which is the subject of this practice review.

17. The objective of this review was to determine whether departmental contracts issued against SOs and SAs were consistent with applicable sections of the Treasury Board (TB) Contracting

Policy, the *Financial Administration Act* and regulations made under it, and support the principles of fairness, openness and transparency.

18. The use of SOs and SAs by select federal organizations was reviewed using pre-established criteria. Departmental SO and SA usage was assessed against these criteria, which, when in place and operating as intended, should individually and collectively contribute to procurement practices consistent with procurement laws, regulations and policies. Additionally, these criteria should contribute to contracts issued against SOs and SAs which respect the principles of fairness, openness and transparency:

- Training was available and taken by individuals using SOs and SAs;
- Guidance was available to those using SOs and SAs;
- Contracts issued against SOs and SAs were consistent with relevant policies, guidance and procedures;
- Processes were implemented to monitor the use of SOs and SAs; and
- Feedback or other mechanisms existed and were used to improve the SO or SA process or instructions.

Scope and Methodology

19. Goods and services contracts issued against SOs and SAs from April 1, 2013 to August 31, 2014 were reviewed.

20. The following organizations were included within the scope of the review as they were subject to complaints from suppliers related to the award of a contract under a SO or SA reviewed by OPO during the last two fiscal years:

- Department of Foreign Affairs, Trade and Development Canada (DFATD);
- Correctional Service Canada (CSC);
- Health Canada (HC); and
- Public Health Agency of Canada (PHAC).

21. As Public Works and Government Services Canada (PWGSC) is responsible for the establishment of the mandatory SOs and SAs to be used by all federal departments and agencies, PWGSC was included in the review scope with regards to assessing SO and SA feedback mechanisms. Call-ups and contracts issued by PWGSC were excluded from the scope of this review.

22. The review methodology included:

- Interviews with staff;
- Review and analysis of documentation such as internal policies and training material;
- Review of the processes used to issue contracts against SOs and SAs; and
- Review of a judgmental sample of SO and SA issued contracts.

The review sampling methodology did not make a distinction between PWGSC or departmentally established SOs and SAs. As such, drawn samples contained both contracts issued under PWGSC and departmental tools. The files were drawn considering frequency of use, materiality and risk.

Why this is important

23. The Government of Canada's average annual core commodity spending attributable to SOs and SAs is approximately \$3.4 billion². This annual spending includes only the PWGSC established SOs and SAs which are mandatory for organizations to use. The value of expenditures using SOs or SAs created by other organizations, as well as non-mandatory PWGSC SOs and SAs, are not included in the \$3.4 billion.

24. There is no central repository of SOs and SAs used by all federal organizations, consequently there is no means by which to obtain a total federal expenditure attributable to SOs and SAs. While the \$3.4 billion understates total spending attributable to all SOs or SAs, it is nevertheless a significant portion of the \$14.6 billion reported as the Government of Canada 2013³ procurement expenditure.

25. The Government procurement environment is highly complex, particularly given the multitude of commodities required to run government operations and the number of departments and agencies with different operational needs. Numerous SOs and SAs have been created and various methods exist for establishing contracts using them. It is critical that users understand the differences between SOs and SAs and when and how to use them. The volume of contracts issued using these tools and the nature of the issues reviewed by OPO suggests the potential for SOs and SAs to not be used as intended.

Observations

Training

26. For the purposes of this review, procurement training material available to departments was assessed to determine whether it covered the use of SOs and SAs and whether individuals using SOs and SAs to execute contracts on behalf of the Crown had taken training. The quality of training was not assessed. The availability and uptake of training should contribute towards a uniform and consistent application of applicable policies, procedures and laws in the issuance of contracts using SOs and SAs.

27. In all organizations reviewed, SOs and SAs were available to, and used by, procurement personnel as well as non-procurement staff with delegated contracting authority. All organizations took measures to limit non-procurement staff's abilities to unilaterally use tools. Departments

² <http://www.tpsgc-pwgsc.gc.ca/bve-oae/rapports-reports/2011-712/index-eng.html#c2>

³ http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/con_data/par-13-rpa-eng.asp

provided evidence demonstrating that non-procurement staff could only procure using SOs and SAs after certain procurement training was taken.

28. Training included mandatory in-house training developed by organizations. This training contained instruction regarding the use of SOs and SAs. DFATD was not assessed as it indicated that training material was being redeveloped.

29. To verify whether mandatory in-house training was taken, the names of individuals exercising contracting authority were compared against departmental training databases. In 87% of instances reviewed at CSC, HC and PHAC training was found to have been taken. Despite being mandatory, 13% of cases were detected where personnel were potentially utilizing a tool without taking the mandatory departmental training. DFATD was not assessed as new training material was being developed at the time of the review.

30. Organizations indicated that general procurement in-house training which contained instruction regarding SOs and SAs was delivered to non-procurement staff by the procurement unit on an as requested basis.

31. In addition to mandatory in-house training, staff from all organizations confirmed that training was taken from outside sources such as the Canada School of Public Service (CSPS) and through PWGSC.

32. All organizations, including PWGSC, confirmed that PWGSC training was mandatory for certain professional services tools. For example, in order to access the ProServices SA, individuals from organizations were required to take mandatory training to obtain access to the ProServices system. The PWGSC mandatory training material was reviewed and found to provide instruction regarding the use of the SOs or SAs in question.

33. Generally speaking, training regarding SOs and SAs was included in general procurement training material although training for each tool is not available and often not mandatory.

Guidance – Policies, Guidelines and Procedures

34. This review assessed whether guidance regarding SOs and SAs was available to staff and whether the guidance provided information regarding the use of SOs and SAs. Guidance was expected to help individuals using a SO or SA procure in a manner consistent with government contracting requirements.

35. Guidance reviewed included departmental or agency specific policies, guidelines and procedures. All organizations reviewed had established general procurement policies or guidelines. Other than DFATD which created specific guidelines for frequently used departmental tools, information regarding SOs and SAs were found within general procurement information. Policies and guidelines were available to staff with procurement responsibilities via organizational intranets. In addition to policies and guidelines, all organizations provided OPO with checklists or process maps which described the organization's procedures to be followed when using SOs or SAs.

Finally, procurement personnel from all organizations indicated that they could be consulted if specific information was needed by program personnel.

36. To complement guidance available internally, staff from all organizations indicated they were aware of, and used, external guidance when procuring using SOs and SAs. The two main sources of external guidance referred to were the TB Contracting Policy and PWGSC Supply Manual. Both sources provide general procurement information and contain information regarding the use of SOs and SAs.

37. SOs and SAs contain call-up or contracting procedures, respectively, regarding how contracts must be established. Common procedures for either SOs or SAs are:

- Contracting with one supplier – Goods or services are acquired from one supplier;
- Right of First Refusal – A supplier is selected based on a ranked list where the highest ranked supplier is solicited before those which are ranked lower;
- Lowest Total Cost – A supplier is selected based on the lowest cost for a basket of goods;
- Best Fit – Goods or services or suppliers are selected based on those that best meet requirements; and
- Procedures which are dependent on dollar value thresholds – Goods or services or suppliers are selected using procedures which differ depending on the value of the requirement.

38. Procedures and government wide guidance for using SOs and SAs were found within organizations and within individual tools.

Consistency of Contracts Issued against SOs and SAs with Policies and Procedures

Sample of Contracting Files

39. A judgemental sample of contracts issued against SOs and SAs were drawn and reviewed to determine whether they were awarded in a manner consistent with TB Contracting policy and the call-up or contracting procedures. Sample selection criteria considered frequency of use, high dollar value by expenditure categories by department, and SOs and SAs identified by departments as potential risks or OPO complaints. The review sampling methodology did not make a distinction between PWGSC or departmentally established SOs and SAs. As such, drawn samples contained both contracts issued under PWGSC and departmental tools.

40. OPO assessed, where applicable, whether:

1. The contracting procedures specified in the SO or SA were clear and adhered to;
2. There was an indication work was done within the contract start and end dates;
3. A clear statement of work ,which identified tasks, deliverables and timelines, was on file;
4. Bid evaluation criteria was not perceived as overly restrictive;
5. The pricing used in contracts was consistent with the SO or second stage procedure (SA); and
6. Notifications sent to unsuccessful bidders were on file.

41. 30 files were requested from DFATD, CSC, HC and PHAC respectively for an intended sample size of 120 files.
42. Of the 120 files received 28 files contained insufficient documentation to perform the required assessment. Insufficient documentation included files that did not contain the contract or the SO or SA. 24 (86%) of the 28 files containing insufficient documentation originated from HC or PHAC. In total, 92 files contained the contract and SO or SA.

Clarity and Consistent Application of Contracting Procedures

43. The TB Contracting Policy requires procurement files “be established and structured to facilitate management oversight with a complete audit trail that contains contracting details related to relevant communications and decisions including the identification of involved officials and contracting approval authorities⁴”. Accordingly, file documentation was reviewed to determine whether a complete audit trail was on file to support consistent and transparent decision-making. In addition, the contracting procedures in each tool were reviewed to assess clarity.
44. SO and SA call-up and contracting procedures were reviewed. No subjectivity was detected in the instructions to users in all but one of the tools reviewed.
45. Sufficient documentation was found in 62 of 92 (67%) files to verify contracting procedures specified in the SO or SA were followed. In these instances evidence of communication between potential suppliers and organizations was on file. Justifications for lowest cost or best fit were documented and supported decisions made.
46. Documentation was insufficient in 24 of 92 files (26%) to determine whether contracting procedures were followed. Instances of incomplete documentation were noted in all organizations. Missing documentation included records of communication with potential suppliers, calculations of lowest cost and requests for bids sent to potential suppliers.
47. In 6 of 92 files (7%) reviewed the contracting procedure specified in the SO or SA was not followed. Instances of contracting procedures not being followed were noted in all organizations. Examples where procedures were not followed included a call-up issued to a supplier no longer qualified on the SO, the issuance of a non-competitive contract where procedures required a competitive selection process, and instances where suppliers were selected without required justification.
48. CSC files were considerably more reliable than those of the other sampled departments. 27 of 30 (90%) CSC files had sufficient documentation to confirm contracting procedures were followed.
49. DFATD, PHAC and HC files were not sufficiently complete to demonstrate procedures were followed. Files where it was evident procedures were not followed were considered erroneous. The error rates from files provided by each organization under scope are provided in *Table 1.1*:

⁴ TBCP 12.3.1

Table 1.1 SO or SA Contracting Procedure Error Rates:

Federal Organization	Error Rate
CSC	10%
DFATD	50%
PHAC	68%
HC	53%

Work Completed within the Contract Period

50. OPO examined files to assess whether required deliverables were provided during the contract specified timelines. Specifically, we attempted to determine if there was an indication that goods were ordered or services provided before a contract was authorized or after the contract had expired.

51. Several instances were found where documentation suggested work described in the contract was taking place outside the scope the contract. Situations where goods or services are provided outside the scope of appropriately authorized written contracts expose departments and agencies as well as suppliers to potential liabilities. These situations are also a violation of delegated contracting authority. Appropriately authorized written contracts can protect the interests of both suppliers and departments and agencies by clearly articulating what is required and agreed upon by both parties.

52. In 66 of 92 (72%) files reviewed, documentation indicated that goods were ordered or services provided within the period of the contract.

53. In 17 of 92 (18%) files reviewed, documentation indicated that work was performed outside of the contract start or end dates. This issue was noted in all organizations.

54. In 9 of 92 (10%) files reviewed, contracts were not appropriately authorized as signatures or dates were not indicated. This issue was noted in all organizations.

Statements of Work

55. Section 4.1.9 a) of the TB Contracting Policy requires the Statement of Work (SoW) to clearly describe the work to be carried out, the objectives to be attained and the time frame for their attainment. A clear statement of work is critical as it allows both the government and supplier to know what deliverables are expected from the contract. Whether the objectives of a contract are achieved relies heavily on the clarity and precision of the SoW. This is why it is imperative the SoW clearly and unambiguously describes the work in terms of expected results, specific deliverables and definitive milestones.

56. Of the 92 files reviewed, 64 required the contracting authority to create a SoW as per the SO or SA instructions. 59 of 64 (92%) of the SoW's reviewed contained clearly described deliverables, tasks and timelines.

57. Of the 5 files where issues were identified with respect to the SoW, 2 did not have a SoW on file and 3 did not contain specific deliverables and tasks with associated timelines. All five contracts were administered by HC.

Bid Evaluation Criteria

58. Section 4.1.3 of the TB Contracting Policy requires that whenever practical, equal opportunity must be given to all firms and individuals to compete. In order to award a contract in a fair and open manner, bid evaluation criteria must not be overly restrictive.

59. In certain instances the instruction contained in the tool requires the selection of a supplier to be done through the solicitation of pre-qualified suppliers and evaluation of bids. Accordingly, bid evaluation criteria were assessed using the following indicators to determine if they could be perceived as overly restrictive:

- Requiring experience within a specific branch within an organization;
- Working with proprietary tools or systems;
- Extensive combination of qualifications; and
- Certifications or experience beyond what would be needed to meet requirements.

60. Of the 92 files reviewed, 8 contained bids which were evaluated as part of a solicitation process. In all 8 instances reviewed at DFATD, PHAC and HC, no indications of overly restrictive bid evaluation criteria were found.

Consistency of Pricing

61. As indicated in previous procurement practice reviews carried out by OPO, the use of SOs and SAs as methods of supply was meant to, among other things, reduce the cost of commonly purchased goods and services⁵. Cost reductions are realized through lower administration costs and negotiated prices and rates. This review assessed whether the pricing stipulated in issued contracts was consistent with the price established in the SO or the SA second stage solicitation process. *Table 1.2* presents the results of this assessment by organization.

⁵ <http://opo-boa.gc.ca/praapp-prorev/2009-2010/chptr-5-eng.html#chap5n3>

Table 1.2 Consistency of Pricing

Federal Organization	Prices were Consistent (%)	Prices were Inconsistent (%)	Could not Determine (%)
CSC	80	0	20
DFATD	69	8	23
PHAC	68	11	21
HC	53	18	29
Total Average (%)	67	8	25

62. In 62 of 92 (67%) of files reviewed, the price indicated in the contract was consistent with the price established in the SO or the second stage solicitation. In these instances, the prices stipulated in the contract were itemized and could be traced back to the price list for a SO or the second stage solicitation in the case of an SA.

63. In 7 of 92 (8%) of files reviewed, prices were found to be inconsistent with the prices established in the SO.

64. Consistency of prices could not be confirmed in 23 of 92 files reviewed (25%). In these instances, it could not be determined whether the prices used in the contract were consistent because electronic pricing catalogues referred to in SOs or SAs were not available, sufficient documentation was not included on file, prices included in contracts were not itemized or electronic pricing catalogues and documentation on file did not provide sufficient information to assess whether pre-negotiated discounts were applied.

Regret Letters to Unsuccessful Bidders:

65. As per TB Contracting Policy section 10.8.21, debriefings should be provided to unsuccessful bidders on request. Although not a policy requirement, issuing regret letters to unsuccessful bidders improves transparency of the procurement process by providing the opportunity for suppliers to understand why their bids were not successful. Following the receipt of a regret letter, bidders have the option to request a debriefing. Information from a debrief could be used by a supplier to improve future proposals. Procurement staff from all organizations indicated that supplier debriefings are provided when requested.

66. In 9 files reviewed, the selected tool required departments to seek bids from suppliers and multiple bids were received. In 7 of 9 instances regret letters were not found on file. Of the 7 instances where regret letters were not on file, 3 instances originated from DFATD and 4 from HC.

Analysis of Files which Contained Critical Errors

67. In summary, of the 92 files assessed by OPO, 43 (47%) files contained one or more errors considered critical. Critical errors have been defined by OPO as an inconsistency with the *Financial Administration Act* or any regulations made under it, the TB Contracting Policy and the rules of use for each tool.

68. For the purposes of this review the following errors have been considered critical:

- Procedures for contracting using a SO/SA were not followed;
- Insufficient documentation was on file to determine whether the contracting procedures were followed;
- Unclear SoWs or no SoW was on file in instances where required;
- Indication that work was done outside of the contract start or end dates; and
- Using prices in contracts inconsistent with prices established in the SO or second stage solicitation.

69. Critical error rates are provided by organization in Table 1.3.

Table 1.3 – Critical Error Rates

Federal Organization	Error Rate
CSC	17%
DFATD	54%
PHAC	47%
HC	88%

70. Of the 43 critical errors identified in the files reviewed, 17 (40%) were solely related to insufficient documentation. The absence of documentation raises questions whether the principles of fairness, openness and transparency were respected in the procurements reviewed.

Monitoring of Contracts Issued Against SOs and SAs

71. Section 5.1.1 of the TB Contracting Policy states “it is the responsibility of organizations to ensure adequate control frameworks for due diligence and effective stewardship of public funds are in place and working.” Section 11.1.1 of the Policy states “contracting authorities are encouraged to establish and maintain a formal challenge mechanism for all contractual proposals”. Effective monitoring of procurement contracts can improve consistency with procurement policies and procedures. This review assessed whether organizations had processes implemented to ensure contracts issued against SOs or SAs were consistently and regularly monitored.

72. Various general procurement monitoring activities were found. Although not specific to contracts awarded against SOs and SAs, the following activities would include contracts issued against SOs and SAs:

- All organizations reviewed indicated peer review of procurement files took place within procurement units. These reviews allowed senior procurement officers to oversee the work of less experienced staff;
- Monitoring of frequently used vendors was conducted at CSC, HC and PHAC. This type of monitoring provided information regarding why repetitive contracting was occurring; and
- CSC, HC and PHAC indicated that internal controls for procurement were reviewed by finance or internal audit.

73. At CSC, consistent and regular monitoring of contracts issued against SOs and SAs was found. For example:

- On a monthly basis, a sample of procurement contracts are selected and reviewed for consistency with policies and procedures. Files are selected using specific criteria for monitoring contracts issued against SOs and SAs. If corrective action was necessary, the CSC procurement manager followed-up with the contracting authority.
- OPO noted a good practice when reviewing the procurement monitoring activities of CSC; an automated tool capable of analysing large quantities of contracting data and identifying anomalies was being piloted. This tool had the capability of identifying specific errors related to SOs and SAs such as identifying whether:
 - Contracting volume was within the financial limitations of a SO or SA;
 - A particular contract was within the call-up limitation of a SO or SA; and
 - A contract was awarded against an expired SO or SA.

74. Other than CSC, organizations were unable to provide sufficient evidence that regular monitoring of contracts issued against a SO or SA was occurring. While numerous procurement monitoring activities were occurring at the organizations reviewed, a systematic, risk-based approach to assessing compliance of contracts issued against a SO or SA with procedures indicated in each tool was not implemented.

75. The organizations reviewed have established formal challenge mechanisms as recommended by the TB Contracting Policy Section 11.1.1. As described by the Policy, this challenge mechanism can be comprised of a board, whose role is to provide assurance that government policies and authorities are observed with regard to procurement. Mechanisms can range from formal review boards to advisory groups, depending on the size of the organization. Membership can be composed of senior financial and procurement officers, as well as members from different program areas, to ensure there is balance and independence in the review process. The mandate can be established according to procurement activity and risk factors (e.g. contracts where the value is close to trade agreement limits) that are approved by senior management.

76. CSC has implemented a structured approach whereby approval of all contracts over \$10,000 is required by a contract review board before being issued. Records of decision were reviewed which confirmed review boards met regularly. Review boards were in place at DFATD; however, no evidence was provided to demonstrate that boards reviewed contracts awarded against SOs and SAs. HC and PHAC indicated that contract review boards were established, however, these organizations could not provide documentary evidence the boards met regularly or evidence that they reviewed SOs and SAs.

77. As indicated in *Table 1.3*, the lowest critical error rates in contracts against SOs and SAs were found at CSC. Our assessment revealed the department had contracting review boards that met regularly as well as a strong control framework for providing quality assurance on contracts against SOs and SAs. The monitoring of contracts issued against SOs and SAs using formal challenge mechanisms and adequate control frameworks improves consistency with policies and procedures and further insures fairness, openness and transparency in the procurement process. These measures were not apparent in the other organizations.

Availability and Use of Feedback Mechanisms

78. The review assessed whether feedback mechanisms existed and how this information was used to make improvements to SOs and SAs issued by federal organization including PWGSC.

79. All organizations indicated that electronic mail boxes were used to obtain feedback regarding SOs and SAs such as questions, concerns or comments from federal officials and suppliers. Procurement officers indicated that, for the most part, concerns about a particular tool would be addressed at the procurement officer level and escalated to management if needed.

80. PWGSC identified various types of mechanisms by which stakeholders could provide feedback and exchange information regarding the SOs and SAs they established. These mechanisms included:

- The SO or SA authority who is identified in each tool and is available to address concerns regarding contracts issued against a SO or SA;
- Committees which included membership from external stakeholders such as industry associations and federal departments and agencies. Records of decisions were provided to OPO which showed these committees met regularly to exchange information.
- Data regarding contracting volume was provided by suppliers to PWGSC through usage reports; and
- Questionnaires which were sent by PWGSC to suppliers and federal organizations to assess satisfaction.

81. PWGSC provided various examples of actions taken to improve processes resulting from stakeholder feedback. Examples included:

- Replacing the PS Online SA with the ProServices SA, which resulted from stakeholder consultation and included changes to improve usability and reduce overlapping methods of supply;
- Introducing a 30 day timeline for awarding a contract under the Informatics Professional Services SA. Previously, the length of time to award a contract (under \$400K) using this SA took too long. When the contract was awarded, the winning supplier was not always able to provide the proposed resource indentified in their bid as the proposed resource may have found work elsewhere due to lengthy contracting process;

- Allowing two or more suppliers to pool experience for certain requirements. This change to the Task Based Informatics Professional Services (TBIPS) SA was meant to increase the competitiveness for small and medium sized organizations by allowing smaller organizations to bid on larger contracts; and
- Making changes to various templates to improve clarity.

82. DFATD, PHAC and HC held regular meetings with procurement staff to share lessons learned from feedback received from suppliers and staff with procurement responsibilities. CSC provided examples where bulletins were sent to procurement staff when issues were identified.

83. After an SO or SA is expired, organizations may choose to re-solicit whereby new suppliers can be issued a SO or SA. DFATD provided an example of where, during the re-solicitation (often referred to as “refreshing”) of the Monitoring Services SA, the Department held a bidders conference where potential suppliers could seek information and ask questions. Questions and responses were documented and used to make revisions to the process.

84. All organizations reviewed had mechanisms to obtain feedback from stakeholders and consider, communicate and integrate it within their tools.

Conclusion

85. SOs and SAs have been created with the aim of expediting the procurement process and reducing costs by leveraging the Government’s purchasing power. However, when verifying whether organizations used prices consistent with negotiated prices and rates, prices could not be verified in 25% of files reviewed. This raises questions as to whether the cost reduction benefits of using these tools are being fully realized.

86. As no central repository of all SOs and SAs in use in the Federal Government is available, the actual number of tools and the associated total spending is unknown. Additionally, there is no way of knowing whether duplicate or overlapping SOs or SAs exist.

87. While general procurement training exists and includes some information regarding SOs and SAs, training is not available nor mandatory for all tools.

88. Of the 92 contracts assessed by OPO, 43 (47%) contained critical errors such as containing poor documentation which prevented OPO from determining whether the SO or SA was being used as intended.

89. With the exception of CSC, organizations had little, to no, monitoring of contracts issued specifically against SOs and SAs. The lack of monitoring of contracts issued against SOs and SAs raises questions as to whether the use of these tools is receiving the appropriate amount of oversight.

Recommendations

90. The Procurement Ombudsman recommends that DFATD, HC and PHAC implement measures to ensure:

1. Documentation requirements regarding SO and SA procurement files are adhered to; and
2. Risk based monitoring of SOs and SAs procurement files regularly occurs commensurate with senior-management sanctioned risk-tolerances.

Department Response

91. In accordance with section 5 of the Regulations, the Procurement Ombudsman provided CSC, DFATD, PHAC, HC and PWGSC the opportunity to comment on the proposed recommendations of this review and the reasons for them. Departmental comments were taken into consideration prior to the report being finalized and published.

92. DFATD, PHAC and HC provided additional information to OPO during the report clearance process, stating the documents would complete the files reviewed by OPO and change the findings of this report. As the information was provided past the examination phase of this review, the documents were not examined or assessed.

93. DFATD's response:

Recommendation #1

Documentation requirements and deficiencies identified in the OPO review will be underscored in the Department's internal contracting training, guidelines and tools (eg. Contract file checklists) provided to all staff involved in SO and SA call-up process. Verification of file documentation will be a mandatory precondition to contracts officers' issuance of a call-up and activation of purchase orders in the Department's Financial Management System

Recommendation #2:

DFATD's risk-based contracts monitoring regime is currently aligned with the Department's unique international operating environment and significantly higher delegated contracting authorities – up to \$20M for services in support of international development assistance. However, the Department's contracts monitoring plan will be adjusted to review these low dollar value procurements more systematically. Monitoring activities will not only validate the integrity of the procurement/ call-up process, but also compliance with all government policies, rules, regulations and laws, as well as proper file documentation. Monitoring results will be shared with senior management and key stakeholders and lessons learned disseminated through corporate contracting management fora.

94. PHAC's response: The Public Health Agency of Canada is in agreement with the recommendations of this report. Since April 2014 the Agency has implemented changes that strengthened procedures, and an internal follow up examination in July 2014 has confirmed related

improvements. The agency will take all steps necessary to fully implement the recommendations of this report.

95. HC's response: Health Canada is in agreement with the recommendations of this report. Health Canada acknowledges that it experienced difficulties in providing all the necessary information to the Procurement Ombudsman's office during the review period which served to depress its reported performance. Health Canada has implemented changes that have strengthened procedures, and an internal follow up examination in July 2014 has confirmed related improvements. Health Canada will take the additional steps necessary to fully implement the recommendations of this report.