



## OFFICE OF THE PROCUREMENT OMBUDSMAN



### PROCUREMENT PRACTICE REVIEW

*Review of Procurement Practices for the Acquisition of  
Temporary Help Services by the  
Canada School of Public Service*

**Ottawa**

**Amended  
February 2015**

**Office of the Procurement Ombudsman**

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## Notice to Reader

This is an amended version of a report under the same title originally published in March 2013. This January 2015 report replaces the March 2013 report.

This amended version is a result of the settlement of Federal Court file number T-608-13 and does not result in modifications to the original report's objectives, findings, conclusions or recommendation. Modifications were made to four paragraphs; these are denoted (via strikeout and underline) as follows and correspondingly in the attached report.

Paragraph 3: Specifically, the information led OPO to review six CSPA contracts (hereinafter referred to as the "original contracts") awarded to Temporary Help Services (THS) agencies for the services of two consultants. None of the six contracts were awarded directly to the consultants, but to two companies that proposed those consultants' services. Four of the contracts were awarded to a company whose consultant provided financial services. The other two contracts were awarded to another company whose consultant provided human resource services.

Paragraph 62 (new paragraph): It should be noted that in July 2012, CSPA representatives provided OPO with a copy of a document entitled "Preliminary Security Report" dated July 17, 2012 and a document entitled "Summary of Events" dated July 18, 2012. Both documents state the financial file associated with one of the contracts under review was missing "9 original invoices" and that these had been "replaced by photocopies". The Summary of Events document further specifies that the photocopies of the missing originals were "marked as "treat as original" and re-certified by the delegated manager". For the purposes of the review, OPO treated the re-certified invoices as originals.

Paragraph 64: ~~In addition to~~ The CSPA files reviewed did not demonstrate compliance with CSPA guidance. The overarching lack of documentation about choosing resulted in limited information regarding how bidders were chosen and explaining evaluation results.

Paragraph 106: Transparency requires providing information to Canadians in a timely manner that facilitates public scrutiny of the decisions made and actions undertaken. As noted above, the lack of documentation on the files shows the CSPA was non-compliant with its own guidance. More importantly, it makes it difficult for the CSPA to demonstrate it properly followed all relevant policies and procedures.

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## Introduction

### Context

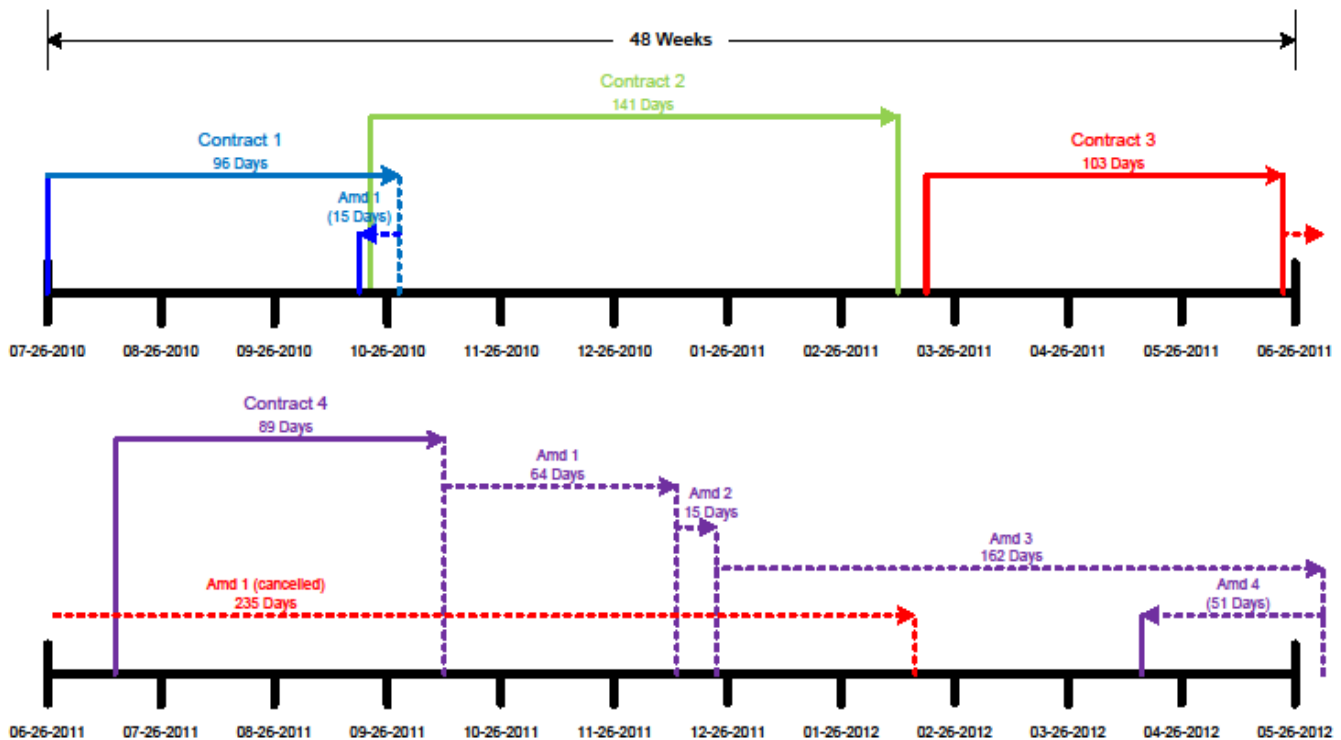
1. In April 2012, the Office of the Procurement Ombudsman (OPO) received information regarding a number of contracts issued by the Canada School of Public Service (CSPS). It was alleged that a manager at the CSPS had shown favouritism and had influenced procurement practices in that repetitive contracts had been awarded to two particular consultants. In addition, it was alleged this pattern of repetitive contracting and favouritism could also be found in organizations where the manager had previously worked with at least one, and possibly both, consultants.
2. Paragraph 22.1(3)(a) of the *Department of Public Works and Government Services Act* (the *Act*) and subsection 4(1) of the *Procurement Ombudsman Regulations* (the *Regulations*) provide the Procurement Ombudsman with the authority to review the procurement practices of departments and organizations to assess their fairness, openness and transparency if there are reasonable grounds to do so. After considering the information, the Procurement Ombudsman determined there were reasonable grounds to conduct this review.
3. Specifically, the information led OPO to review six CSPS contracts (hereinafter referred to as the “original contracts”) awarded to Temporary Help Services (THS) agencies for the services of two consultants. None of the six contracts were awarded directly to the consultants, but to two companies that proposed those consultants’ services. Four of the contracts were awarded to a company whose consultant provided financial services. The other two contracts were awarded to another company whose consultant provided human resource services.
4. Table 1 shows the CSPS awarded the four contracts for financial services between July 2010 and July 2011. The consultant who provided financial services worked at the CSPS from July 28, 2010, to April 12, 2012, a period of 89 weeks. The total value of the contracts was approximately \$435,000.
5. Table 2 shows the CSPS awarded two contracts for human resource services in November 2010 and April 2011. The human resource consultant worked at the CSPS from November 24, 2010 to April 16, 2012, a period of 73 weeks.<sup>1</sup> The value of the contracts was approximately \$260,000.

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<sup>1</sup> . The human resources consultant at issue was replaced for approximately two months at the end of the first contract. The terms and conditions of the contracts allowed the substitution of consultants, with the contracting organization’s consent, in certain circumstances. The consultant at issue was the sole consultant for the second contract.

**Table 1: The Financial Services Contracts**

Original Contracts	Start Date	Original End Date	Original Value	Number of Amendments	Final End Date	Final Value
Consultant 1 – Financial Services						
Contract 1	Jul-28, 10	Oct-29, 10	\$48,644.12	1	Oct-15, 10	\$48,644.12
Contract 2	Oct-18, 10	Mar-07, 11	\$88,022.70	0	Mar-07, 11	\$88,022.70
Contract 3	Mar-14, 11	Jun-24, 11	\$88,958.35	0	Jun-24, 11	\$88,958.35
Contract 4	Jul-12, 11	Oct-07, 11	\$79,515.84	4	Apr-12, 12	\$208,808.73
		<b>Sub-Total</b>	<b>\$305,141.01</b>		<b>Sub-Total</b>	<b>\$434,433.90</b>



Legend

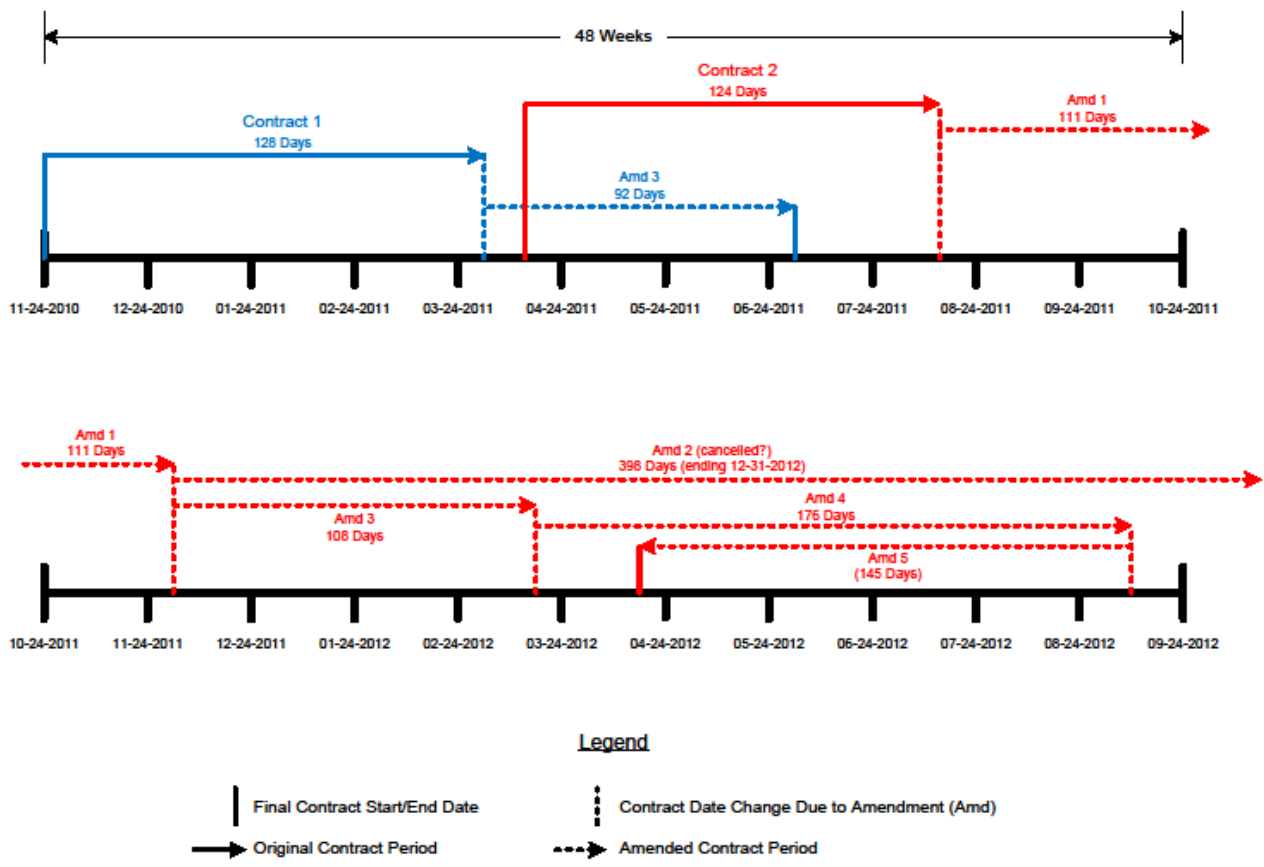
- Final Contract Start/End Date

Original Contract Period
- Contract Date Change Due to Amendment (Amd)

Amended Contract Period

**Table 2: The Human Resource Services Contracts**

Original Contracts	Start Date	Original End Date	Original Value	Number of Amendments	Final End Date	Final Value
<b>Consultant 2 – Human Resource Services</b>						
Contract 1	Nov-24, 10	Mar-31, 11	\$66,918.60	3	Jun-30, 11	\$ 78,868.35
Contract 2	Apr-08, 11	Aug-12, 11	\$71,698.50	5	Apr-16, 12	\$180,679.47
		<b>Sub-Total</b>	<b>\$138,617.10</b>		<b>Sub-Total</b>	<b>\$259,547.82</b>



6. The six contracts were all awarded pursuant to a multi-departmental temporary help services (THS) supply arrangement (SA).

**Scope and Period of the Review**

7. Prior to reviewing the six original contracts, OPO requested a listing of contracts awarded by the CSPS under the same THS vehicle used to procure the services of the two

aforementioned consultants. A total of eight contracts for the services of four other consultants were selected (collectively to be referred to as the “comparative sample”). This allowed OPO to assess if the procurement practices observed on the original contracts were representative of the CSPA’s general procurement practices regarding THS. The scope of this review therefore encompassed 14 contracts awarded by the CSPA between October 2008 and October 2011 for the services of six different consultants.

### Review Objective and Methodology

8. The objective of this review was to determine whether the procurement practices used by the CSPA to acquire temporary help services were consistent with: (a) the *Financial Administration Act* and any regulations made under it; (b) relevant policies and procedures; and (c) the principles of fairness, openness and transparency.
9. OPO defines the principles of fairness, openness and transparency as follows:
  - a. Fairness: Providing equal treatment to all current and potential suppliers;
  - b. Openness: Providing all potential suppliers with the opportunity to submit bids for government procurement;
  - c. Transparency: Providing information to Canadians in a timely manner that facilitates public scrutiny of the decisions made and action undertaken.
10. To achieve the objective of this review, OPO compared the information in the files provided by the CSPA against the relevant federal legislative, regulatory and policy frameworks, focussing on whether the CSPA’s procurement practices were consistent with the THS contracting vehicle requirements and its own internal procurement policies.
11. OPO also received written responses from the CSPA regarding questions OPO posed with respect to the specific contracts under review as well as the CSPA’s general procurement practices for the time period covered by the review.
12. Under the *Regulations*, the provision of departmental information and documentation is at the discretion of the review department. As such, the observations in this report are based on the documentation provided by the CSPA.
13. Regarding the allegation that a manager at the CSPA had shown favouritism and influenced procurement practices, it should be noted that section 22.1(3)(a) of the *Act* restricts the Procurement Ombudsman to reviewing the “... practices of *departments* for acquiring materiel and services to assess their fairness, openness and transparency” (emphasis added). OPO does not have jurisdiction to investigate the activities or behaviours of individuals. By reviewing the procurement practices of the CSPA, OPO could determine whether the CSPA had appropriate management control frameworks to limit, prevent or detect the alleged improper behaviour.
14. With respect to the allegation that the pattern of repetitive contracting and favouritism could also be found in organizations where the manager had previously worked, OPO requested confirmation from the organizations that the consultants were under contract during the period when the manager worked in those organizations. This measure was undertaken to determine if this allegation could have merit.



15. Responses from these organizations confirm that the consultant providing financial services was hired through repetitive and sequential contracts during these timeframes. As such, the allegation could have merit. As cited in paragraph 13, the *Act* allows the Procurement Ombudsman to review the practices of departments; it does not, however, provide a mandate to specifically investigate allegations against an individual. Given the scope of the Procurement Ombudsman's legislated mandate this issue was brought to the attention of the deputy heads of the organizations.

## Background

16. All contracts reviewed were awarded using a THS contracting vehicle established to assist federal organizations in the National Capital Area with their procurement of temporary help services. The THS contracting vehicle has two tools for federal organizations to obtain temporary help: a supply arrangement (THS SA), for which federal organizations solicit bids from pre-qualified bidders; and a standing offer (THS SO), for which federal organizations call up services based on a ranked list of suppliers.
17. All of the original contracts were awarded using the THS SA tool. According to the terms of this THS tool, contracts awarded after May 2009 can have a maximum value of \$400,000 and a maximum duration of 48 weeks. Federal organizations may petition the department responsible for the THS tool to extend the contract for an additional 24 weeks, for a total of 72 weeks. Prior to May 2009, the THS tool did not contain any time limits, but the contract values were limited to \$89,000.
18. According to the terms of the THS vehicle, federal organizations are restricted to using THS services for one of three situations:
  - a. When a public servant is absent for a temporary period of time;
  - b. When there is a requirement for additional staff during a temporary workload increase, in which there is an insufficient number of public servants available to meet the requirement; or,
  - c. A position is vacant and staffing action is being completed.
19. When using the THS SA, federal organizations were required to solicit bids from at least three pre-qualified suppliers: (1) the supplier with the lowest hourly rate; (2) a random supplier generated by the THS SA system; and (3) at least one "user choice" which was selected by the federal organization from the THS SA list of qualified suppliers.
20. When using the THS SO, federal organizations were required to give the lowest-priced supplier in a particular category the "right of first refusal" for the work. If the lowest-priced supplier had a consultant that could meet the requirements, it was awarded the contract. If the lowest-priced supplier was unable to meet the requirement, the requirement was sent to the next lowest-priced supplier. If that supplier was unable to meet the requirement, it was sent to the next lowest-priced supplier, and so on, until a supplier was found that could meet the requirement.
21. Suppliers were identified and grouped based on predefined labour classification streams within the THS vehicle. The classification streams (e.g., "Professional Services") were divided into categories (e.g., "Policy", "Financial Management", "Special Advisor") and further subdivided by experience level (i.e., junior, intermediate, senior and advanced). In

- order to be issued a THS SO/THS SA in a particular category, and therefore be eligible to bid on federal THS contracts, suppliers must have demonstrated their capacity to provide consultants that meet the experience, education, security and technical requirements of that particular category and level at the time the THS SA or THS SO was established.
22. Depending upon the federal organization's THS requirement, they could limit their request to the basic qualifications of the particular category being sought (e.g., a Senior Special Advisor). Organizations could also use another document, called a statement of work (SOW) to expand upon these basic qualifications. In all cases the CSPA used SOWs to describe the work to be performed by the consultant and outline additional experience, skills or education requirements (e.g., requiring the proposed consultant to have five years' experience providing guidance to managers on the development and preparation of Departmental Performance Reports). Suppliers were then required to propose consultants who met not only the minimum requirements for the category but also the additional requirements specified in the solicitation.
  23. The original six contracts were all for consultants with the highest level of experience (i.e., "advanced") in either the "Financial Management" (four contracts for financial services) or "Organizational Design" (two contracts for human resource services) categories. The comparative sample contracts were for "Advanced" or "Senior" level consultants engaged in the "Special Advisor" (three contracts), "Organizational Design" (two contracts), "Program(me) Administration" (two contracts) and "Policy" (one contract) categories.
  24. At the CSPA, THS contracts with a value greater than \$10,000 are awarded by the Procurement and Contracting Unit (PCU), a division of the CSPA's corporate services branch. Each of the contracts reviewed by OPO was managed by a program manager (PM) and was for services related to corporate services. Thus, in all contracts reviewed, both the PCU and the PM were part of the CSPA's corporate services branch.
  25. In June 2012, OPO released a report entitled *Acquisition of Training Services by the Canada School of Public Service*,<sup>2</sup> in which it raised concerns with respect to the CSPA favouring an existing contractor by issuing repetitive sole source contracts and splitting contracts in circumvention of government contracting policies. OPO also noted, in the case of those contracts, PM staff disregarded advice from the PCU and undermined the PCU's effectiveness.

### Observations Regarding the Original Contracts:

26. OPO review sought to determine whether the CSPA THS procurement practices used for the original six contracts were consistent with (a) the *Financial Administration Act* and any regulations made under it; (b) relevant policies and procedures; and (c) the principles of fairness, openness and transparency. OPO analysis revealed:
  - a. The CSPA did not always follow its own, Treasury Board or THS contracting policies and guidelines;

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<sup>2</sup> . <http://opo-boa.gc.ca/prapp-prorev/2012-2013/spe-pso-eng.html>

- b. The CSPA did not properly define its requirements;
- c. Contracts were awarded to suppliers whose bids did not meet solicitations' mandatory requirements; and
- d. Files were not properly documented.

### **The CSPA Did Not Always Follow Contracting Policies and Guidelines**

27. OPO considered the relevant sections of the *Treasury Board Contracting Policy* as well as the THS SA terms and conditions.
28. In addition, OPO considered the following CSPA guidance and control policies:
  - The *CSPA Contracting Policy* – this document mirrors the *Treasury Board Contracting Policy* and provides the basic policy framework for conducting procurement activities within the CSPA. Any inconsistencies with this policy by CSPA staff also indicate an inconsistency with the matching Treasury Board policy.
  - The *CSPA Contract Management Framework: Procurement and Contracting Desk Guide for Fund Centre Managers and Admin Officers (Revised Version)* – this document is more prescriptive than the *CSPA Contracting Policy* and is, in essence, the procurement “How to...?” guide for the CSPA. Among other items, it defines the roles and responsibilities of the PCU, the PMs and senior management. It includes specific procurement process scenarios and the Delegation of Financial Signing Authorities Matrix, which specifies the financial authority limits for CSPA personnel, including those related to contracting. Specifically regarding THS contracts, the CSPA's Delegation Matrix specifies the approval of THS contracts over \$89,000 is limited to the President of the CSPA, Vice-Presidents and specified Directors-General that report directly to the President. The CSPA policies also require additional approvals from a Vice-President/Director General if the period of the THS contract is expected to exceed 20 weeks
  - The *CSPA Overview of Procurement and Contracting Quality Assurance Function* – this document specifies the role the PCU should play in ensuring that CSPA procurement activities meet all applicable Treasury Board and CSPA procurement policies.
  - The *CSPA Overview of Contract Review Committee* – this document explains the role and mandate of the Contract Review Committee (CRC), which, among other things, is to “...[r]eview and challenge selected requisitions or draft contracts at the request of the [PCU], where risks and issues are perceived to be significant, before such contracts are sent to suppliers...”.
29. OPO notes that none of the original contract values exceeded the monetary threshold of \$89,000. Documents on files indicated additional approvals for amendments regarding two of the financial services contracts and one of the human resource services contracts were sought. In two cases the proper approvals were obtained and in the third case the amendment to the contract was cancelled.
30. In that third case, which was the third of the financial services contracts, the documentation about the cancelled amendment refers to the initiation of the fourth

- contract for financial services, clearly indicating a direct link between these two contracts. The decision to proceed with a new contract for fundamentally the same work, instead of an amendment that would have exceeded the \$89,000/20-week limits, resulted in the matter not being brought to the attention of senior CSPS staff charged with contracting oversight.
31. The *CSPS Overview of Procurement and Contracting Quality Assurance Function* states the PCU's mandate with respect to its quality assurance (QA) function is, among other things, to:
- i. Ensure contracts are processed in compliance with Treasury Board contracting policies;
  - ii. Ensure tools and checklists are utilized for each contract;
  - iii. Review and challenge selected requisitions or draft contracts, where risks or issues are perceived to be significant, before such contracts are sent to suppliers; and,
  - iv. Bring issues to the attention of the Senior Manager of the PCU, the Director of Contracting and the Director General, Corporate Services, such as:
    - i. Contract splitting;
    - ii. Unfair tendering and evaluation practices;
    - iii. Contracts amended on numerous occasions; and,
    - iv. Repetitive contracting.
32. The CSPS procurement policy and supporting documents provide guidance to all parties involved in procurement (i.e., senior managers, PMs and the PCU) regarding their respective responsibilities throughout the procurement process. While the PMs, and senior management in general, bear responsibility for procurement planning, the PCU has been assigned the responsibility for ensuring procurement activities adhere to the relevant procurement policies; notably the above mentioned CSPS policy as well as, in these cases, the THS-specific contracting rules. While not alone in its duty to follow proper procurement practices, we did not find evidence of the PCU noting issues with the tendering practices (i.e., the bid solicitation process) and limited evaluation results (as will be discussed below) regarding the original contracts or bringing them to the attention of the Senior Manager of the PCU, the Director of Contracting or the Director General, Corporate Services.
33. There is nothing on the files to indicate that CSPS management was informed about possible breaches of contracting policies/procedures consistent with the QA function, although OPO believes it would also have been reasonable to do so due to the following circumstances:
- i. Contract splitting – Information provided by the CSPS, in the form of two notes to file found on the original contract files (one regarding the four financial services contracts and one regarding the two human resource services contracts), indicates the CSPS considered these four contracts for financial services, and the

- two contracts for human resource services, could have each been a single, longer-term contract.
- ii. Unfair evaluation practices – To be discussed below, regarding each of the four financial services contracts, the supplier’s bid appears not to have met at least one mandatory requirement.
  - iii. Contracts amended on numerous occasions – The first human resources services contract was amended on three occasions, the second human resources services contract was amended five times and the fourth financial services contract was amended four times.
  - iv. Repetitive contracting – both suppliers received multiple contracts for essentially the same work being performed by each of the two same consultants.
34. The *CSPS Overview of Procurement and Contracting Quality Assurance Function* also contains a Procurement and Contracting Checklist (Checklist) which identifies possible risk areas and is supposed to be included with each contract file. It is to be completed by the “Funds Centre Manager” – normally the PM responsible for the work being done – and requires the manager to consider 47 separate questions regarding the circumstances of the contract or amendment being considered (e.g., is it part of an approved procurement plan? is there a risk of an employee/employer relationship? are there ethical or conflict of interest implications associated with the proposed contract?). According to the information found in the files, a properly signed, timely Checklist appears to have been completed by the PMs in only three of the six files; the second, third and fourth financial services contracts. The Checklist also contains a section addressing implications of contract amendments, yet there were no Checklists for any of the 13 amendments associated with the original six files. The Checklist is a tool that raises risk awareness and help monitor procurement activities, however its lack of use rendered its effectiveness moot.
35. The *CSPS Overview of Contract Review Committee* states that the CRC will review, among other things, the following types of practices:
- i. Contract modifications representing an increase of 50% or more in relation to the original amount;
  - ii. Contracts amended on numerous occasions (i.e., 3<sup>rd</sup> amendment or more); and,
  - iii. All *repetitive* sole source and [THS] contracts (i.e., the use of *the same supplier or same person several times in the same year or from one fiscal year to another.* (emphasis in original))
36. OPO considers at least one of these three conditions existed in four of the six original contracts, including both of the human resource services contracts and two of the financial services contracts and, as such, should have been reviewed by the CRC. The documentation found on the second human resource services contract indicates notice of the applicability of the CRC but the CSPS confirmed that none of the original six contracts were reviewed by the CRC. From the documentation provided by the CSPS, OPO cannot determine why these four contracts were not reviewed by the CRC.

## The CSPS Did Not Properly Define or Tender Its Requirements

37. Federal organizations use the basic experience, education and technical requirements specified in the THS category to ensure they are targeting the right level and type of consultant (e.g., a junior financial advisor). The federal organization can then use the SOW and its related evaluation criteria to demand necessary security clearances, additional educational requirements and/or specific experience (e.g., three years of preparing departmental-level annual financial statements).
38. Each of the review files had a SOW drafted by the PM; typically the person from the organization where the consultant would work after the contract was awarded. For all of the original contract files, the PM sent the SOW, along with a list of possible suppliers (i.e., the “user choices”) to the PCU. The PCU added contracting terms and conditions related to: security requirements; the estimated amount of work, expressed in hours; the manner by which bids would be evaluated; and, the due date for the receipt of bids. The PCU then forwarded the entire package, now called a Request for Services (RFS), to suppliers to solicit bids.
39. The THS SA states that federal organizations could require suppliers to respond to the invitation to bid either: “by close of business the next business day (5:00 p.m.); 48 hours from date of request; or other (this allows users to specify longer periods)”. OPO notes that, for all but one case, the file documentation provided by the CSPS indicates this requirement was met. In the case of the first of the human resources contracts, however, the bids were due at 3:00 p.m. the following business day instead of 5:00 p.m..
40. Once bids were received, the PM evaluated them by comparing the consultants’ experience, education, security level, etc. against the mandatory and any rated criteria included in the solicitation. Mandatory criteria must be met or the bid will be disqualified from further consideration; rated criteria typically award points based on the type and length of experience a consultant may have (e.g., 5 points for three years experience in a certain field or 10 points for having five years experience).
41. Once the evaluation was complete, the PM advised the PCU of the evaluation results. The PCU would then award the contract after ensuring there was adequate funding set aside for the requirement. The amount to be set aside was formalized by the signing of a requisition, after the bids were received but before the contract was awarded. This allowed the CSPS to set aside the exact amount of the bid (i.e., the number of hours times the supplier’s hourly rate) for the contract. The PM would provide the PCU with a signed requisition which also contained: the name of the supplier and proposed consultant; to whom invoices should be submitted; financial coding information and other administrative details.
42. In the above-noted case where the bidding period closed at 3:00 p.m. instead of 5:00 p.m., OPO staff found a signed requisition on file that listed the consultant’s name and hourly rate, even though the bid proposing that consultant and specifying the hourly rate was not submitted until the day after the requisition was signed.
43. Another issue noted by OPO was the number of times the estimated amount of work in the original RFS, expressed in hours, did not match the eventual contract or subsequent

amendments. Had suppliers been made aware of the actual amount of work to be performed, they may have re-considered their decision about whether or not to bid.

44. OPO notes that in two of the financial services contracts and one of the human resource services, the total value of the contract changed significantly (i.e. by more than 25 percent) and/or the work itself changed substantially during the course of the contract:
- i. For the second of the financial services contracts, the RFS sought bids for an estimated 885 hours of work. The contract was awarded for only 570 hours. OPO notes the value of the contract, at 570 hours, was just over \$88,000, but still under the CSPS's self-imposed \$89,000 THS limit.
  - ii. For the fourth financial services contract, the RFS was for 480 hours of work and the contract was awarded for the same amount. However, the contract was amended multiple times and by the third amendment the number of hours had increased to a total of 1700. Also, efforts had been made to amend the third contract in this series by adding 1800 additional hours of work to its contracted amount of 537 hours. That amendment had been cancelled by the PM who advised the PCU the amendment was "...being replaced by the one for \$70k", i.e. the fourth contract which, as just noted, increased from 480 hours (less than \$80,000) to 1700 hours (over \$282,000) before being closed out at \$208,808.74.
  - iii. For the second human resources contract, the RFS and contract were both for 450 hours, however the CSPS eventually more than doubled the number of contracted hours (1155) as well as significantly amending the duties to be performed by the consultant. In the file provided by the CSPS, OPO notes the CSPS indicated that four new tasks were being added to the contract, as well as the commensurate funding, and that "this work was not foreseen in the original plan".

#### **The CSPS Awarded Contracts to Suppliers Whose Bids Did Not Meet Requirements**

45. In evaluating bids, for the most part, the PM would advise the PCU of the evaluation results via e-mail and include a grid with "Y[es]" or "N[o]" indicating whether a consultant met the solicitations' mandatory evaluation criteria. On only two occasions did the PM provide a more fulsome explanation of the reasons for which consultants were disqualified and in no case did the PCU require any substantiation to indicate how a proposed consultant *met* the requirements. As will be discussed below, it appears that, for all four of the financial services contracts, the documentation on the file indicated the successful consultant did not meet at least one mandatory criterion and should not have been awarded the contract.
46. The files for three contracts in the financial services series of contracts contained copies of bids which did not demonstrate the proposed consultant had the necessary "secret" security clearance. The bids all indicated the consultant's security clearance had expired and its renewal was in progress. Although the CSPS verified with the federal department responsible for private sector security clearances that the clearance was still valid regarding the first contract, there was no indication on the files that the CSPS verified the status of the consultant's clearance for the subsequent three contracts.

47. Given the importance of the information the consultant would likely be handling, OPO is concerned there was no documentation on the file indicating the CSPS confirmed the proposed consultant's secret clearance level for those subsequent three contracts.
48. In addition, regarding the first and last contracts for financial services, OPO could not determine that the successful consultant's *curriculum vitae* (CV) demonstrated the necessary mandatory experience. Regarding the fourth contract, which contained essentially the same requirements as the first three contracts, the consultant had re-written and reformatted their CV and had removed reference to one of the projects for which, in relation to previous evaluations, they had been credited with a significant portion of the necessary experience. The inability of the bid or CV to demonstrate the consultant met a mandatory criterion should have led to the disqualification of that bidder.

### **The Lack of Documentation on the Files**

49. Section 12.3.1 of the *Treasury Board Contracting Policy* and section 11.3.1 of the *CSPS Contracting Policy* both state:

Procurement files shall 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 authorities.
50. In addition, Annex C to the *CSPS Overview of Procurement and Contracting Quality Assurance Function* is described as a:

...directive which suggests a consistent filing method allowing a more organized approach to business and ensures that anyone reviewing a procurement file can locate various documents with minimal effort.
51. This directive is so detailed that it even specifies what documentation (e.g., the requisition, SOW, bid evaluation, sourcing statement) should be found on the right and left sides of the file.
52. Had all the documentation listed in Annex C been on the files, OPO would have been able to understand why the CSPS made certain decisions regarding the original files, specifically:
  - i. Regarding the four cases where OPO considers the contract to have been awarded to a supplier who did not meet all mandatory conditions – what justification was there to allow the CSPS to overlook the deficiencies, specifically:
    - i. For the three cases where there was a requirement for “secret” clearance and nothing on the file indicates the consultant had such a clearance - was confirmation of the necessary clearances sought and obtained?
    - ii. For the two cases where the experience listed in the CV did not appear to meet the experience requirements of the RFS – how was it determined that the consultant met that experience requirement?
53. The CSPS provided OPO with two overarching notes to file (NTF) entitled “Procurement Strategy...Rationale”. One related to the set of four financial services contracts; the second related to the set of two human resource services contracts. They appear to



describe the situation at the CSPS during the period from late-spring 2010 to April 2012, covering the timeframe related to all six of the original contracts.

54. Annex C to the *CSPS Overview of Procurement and Contracting Quality Assurance Function* makes special mention of NTFs, stating that they can be used to “furnish information regarding deviations from policy, clarifications, direction received or decisions reached (including the rationale for making procurement decisions)” and “serve as a good audit trail”. OPO considers the intent of this directive to be that NTFs should be added to explain circumstances surrounding a file and should be consistent with, or reflective of, concurrent documents on file.
55. Regarding the NTF related to the set of four contracts for financial services, the CSPS stated:
- i. The use of THS was chosen due to the circumstances fitting within the THS guidelines (i.e. a public servant is absent for a temporary period of time -or- there was a requirement for additional staff during a temporary workload increase with an insufficient number of public servants available to meet the requirement; -or- a position was vacant and staffing action is being completed). The NTF explains that a number of resources left the CSPS and it did not have the in-house capacity in the relevant field to replace the missing personnel.
  - ii. The use of THS had a positive financial contribution, as the CSPS was able to terminate an existing contract with another company providing similar services and not replace a senior staff position that had been vacated; allowing the CSPS to realize annual savings between \$400,000 and \$500,000.
  - iii. The CSPS conducted two independent reviews to ensure it was conducting its professional services arrangements following best procurement practices. It noted that neither review “uncover[ed] any shortcomings with respect to the competitive process, nor did the reviews highlight that information was missing or incomplete”.
  - iv. The THS contracts were competed a number of times because of the above noted loss of personnel and that there were lengthy staffing processes to replace the missing personnel.
  - v. The consultant did not work full time at the CSPS.
  - vi. When the positions were re-staffed the final contract was terminated.
56. Based on the documentation contained in the contract files (i.e. the documents that were current with the contracting actions in question) OPO can only comment on two of the above assertions:
- i. There was a spreadsheet on the last of the four files indicating that a “Senior Procurement Advisor” had reviewed that file, however the reviewing advisor noted “[t]his requirement clearly went beyond all expectations. The client should have been challenged to provide better justification...Amendments constituted an additional seven months work. Were the right levels of authority sought?”. OPO does not consider this to match the CSPS’s declaration that no “shortcomings with respect to the competitive process” were uncovered; and,

- ii. The CSPS provided OPO with invoices relating to the six original contracts and, while the financial services consultant did not work at the CSPS on a full time basis, the consultant charged for at least 7.5 hours a day for 355 days over the 19 months of the 4 contracts. This is an average of more than 18 and one half full-time days per month. OPO notes that months typically have between 20 and 23 working days.
57. OPO's review was limited to the four contracts in question and did not examine topics addressed by the other assertions in the NTF. OPO was not provided with any information regarding realized annual savings or the implications of the staffing processes to replace CSPS personnel beyond these statements in the NTF. For this reason, OPO cannot confirm or deny the veracity of a number of the CSPS statements in the NTF.
58. Regarding the NTF related to the two human resource services contracts, the CSPS claimed:
  - i. The use of THS was chosen due to the circumstances fitting within the THS guidelines. The NTF explains: there was a significant organizational restructuring taking place at the time; a number of resources left the CSPS; and, the CSPS did not have any in-house capacity in the relevant field.
  - ii. The use of THS had a positive financial contribution, as it was used to facilitate the elimination of two executive level public servants as well as support staff, allowing the CSPS to realize annual savings of ~\$400,000.
  - iii. The CSPS conducted two independent reviews to ensure it was conducting its professional services arrangements following best procurement practices. It notes that neither review "uncover[ed] any shortcomings with respect to the competitive process, nor did the reviews highlight that information was missing or incomplete."
  - iv. The follow-on contract was required because of the above noted loss of personnel and that there was a lengthy staffing process to replace the missing personnel.
  - v. Due to a Treasury Board directive resulting in the removal of a CSPS business line, additional work was required on the part of the consultant.
  - vi. During the initial contract, the consultant was replaced and, in accordance with THS policy, a replacement consultant was provided by the company.
  - vii. The consultant did not work full time at the CSPS.
  - viii. When the positions were re-staffed the second contract was terminated.
59. Based on the documents that were current with the contracting actions in question, OPO can only confirm three of the above assertions:
  - i. There was a spreadsheet on the second of the two files indicating the same "Senior Procurement Advisor" had reviewed that file and did not include any comments questioning the contracting process.
  - ii. The consultant(s) did not work at the CSPS on a full time basis.

- iii. The consultant was replaced during the first contract.
60. OPO's review was limited to the two contracts in question and did not examine topics addressed by the other assertions in the NTF. OPO would not expect the procurement files to provide any fulsome explanation of any realized annual savings, loss of CSPS personnel, CSPS restructuring or Treasury Board decision implications. For this reason, OPO cannot confirm or deny the veracity of a number of the CSPS statements.
61. The analysis of the NTFs indicates the CSPS could have conducted two procurement processes, one for financial services and one for human resource services, instead of using multiple contracts. OPO does note that, in both cases, if the contracts were grouped into a single contract for each consultant (i.e., one of financial services and one for human resource services), the resulting contracts would have exceeded the maximum length for a THS contract. In addition, the value of the four financial service contracts, if taken as a single contract, would have exceeded the financial limit for THS contracts. This indicates that the CSPS, had it been aware of the full requirement at the beginning of these processes, should have considered other contracting vehicles instead of THS.
62. It should be noted that in July 2012, CSPS representatives provided OPO with a copy of a document entitled "Preliminary Security Report" dated July 17, 2012 and a document entitled "Summary of Events" dated July 18, 2012. Both documents state the financial file associated with one of the contracts under review was missing "9 original invoices" and that these had been "replaced by photocopies". The Summary of Events document further specifies that the photocopies of the missing originals were "marked as "treat as original" and re-certified by the delegated manager". For the purposes of the review, OPO treated the re-certified invoices as originals.

### OPO Conclusions on the Original Contracts

63. Based on the documentation provided by the CSPS and for the reasons outlined in the next paragraph, OPO found sufficient evidence to suggest the two consultants at issue were favoured. OPO considers the issues identified through this review as raising concerns regarding the fairness, openness, transparency and policy compliance of the CSPS's procurement practices associated with the original contracts for the two resources at issue.
64. In addition to The CSPS files reviewed did not demonstrate compliance with CSPS guidance. †The overarching lack of documentation about choosing resulted in limited information regarding how bidders were chosen and explaining evaluation results.;
65. OPO has the following concerns regarding each of the contracts:
- i. Financial services consultant:
    - i. Contract 1 – There was no documentation on the file to indicate the proposed consultant met the mandatory experience requirements listed in the RFS. As the file did not contain a timely Checklist, OPO cannot verify that its 47 questions were considered prior to contract award.
    - ii. Contract 2 – There was no documentation on the file to indicate the CSPS verified whether the consultant had the necessary secret security clearance.

In addition, the original RFS was for 885 hours, but the contract was issued for 570 hours. There was nothing on the file to provide a rationale for the decrease in hours or to allow OPO to dismiss the possibility that this may have been done in an attempt to keep the value under the \$89,000 threshold.

- iii. Contract 3 – There was no documentation on file to indicate the CSPA verified whether the consultant had the necessary secret security clearance. In addition, this was the third contract with the same consultant and should have been considered by the CRC. An amendment which would have more than quadrupled the number of hours and value of the contract was cancelled because the fourth contract for the same consultant was being put in place.
  - iv. Contract 4 - OPO reviewed the documentation on the file and found no basis to conclude that the consultant's CV met the mandatory experience requirements listed in the RFS. There was another compliant bidder who should therefore have been awarded the contract. There was no document on file to indicate the CSPA verified whether the consultant had the necessary secret security clearance. The CRC should have reviewed this contract on three occasions but did not: (1) when the contract was originally awarded, as it was the fourth contract with the same consultant; (2) when the first amendment was issued as the value of the contract was increased by more than 50 percent; and, (3) when the CSPA issued the third amendment.
- ii. Human resource consultant:
- i. Contract 1 – The bidding period did not meet the THS SA requirements. The file included documentation that had been signed by CSPA personnel which identified the consultant and the consultant's hourly rate even though the supplier had not yet submitted its bid. In addition, as the file did not contain a timely Checklist, OPO cannot verify that its 47 questions were considered prior to contract award. Nonetheless, although the contract was amended three times, informing the CRC was not necessary as the amendments were minor or administrative in nature.
  - ii. Contract 2 – the CRC should have reviewed this contract three times – when an amendment raised the value more than 50 percent of the original contract value and when it was amended for the third and fourth times. In addition there was no timely, signed Checklist on file.

## The Comparative Sample

66. Prior to reviewing the original contract files, OPO requested a listing of contracts awarded by the CSPA under the same THS vehicle used to procure the services of the two consultants discussed above. From the listing provided by the CSPA, OPO selected contracts to be used as a comparative sample that matched the following criteria:

- a. Contracts awarded pursuant to the same THS SA tool as the six original files;
- b. Contracts for similar types and levels of services as the six original files;
- c. Multiple contracts awarded for the services of the same individual; and/or,
- d. Contracts with multiple amendments.

67. As can be seen from the following table, the CSPS awarded the eight comparative contracts during roughly the same time period as the original contracts. These eight contracts were awarded to four companies for the services of four consultants. Like the original contracts, the comparative contracts were also for services provided to the corporate services branch of the CSPS. The CSPS only provided OPO with invoices related to one contract. As such, OPO cannot determine how many hours the consultants worked during their combined time at the CSPS.

Table 2: Comparative Sample Contracts

COMPARATIVE SAMPLE	Start	Original End Date	Original Value	Number of Amendments	Final End Date	Final Value
<b>Consultant 3</b>						
Contract 1	Oct-27, 08	Mar-31, 09	\$84,506.63	2	May-08, 09	\$88,852.69
Contract 2	May-29, 09	Oct-16, 09	\$88,704.00	1	Feb-26, 10	\$88,704.00
Contract 3	Jan-18, 10	Jun-30, 10	\$85,680.00	0	Jun-30, 10	\$85,680.00
		<b>Sub-Total</b>	<b>\$258,890.63</b>		<b>Sub-Total</b>	<b>\$263,236.69</b>
<b>Consultant 4</b>						
Contract 1	Jul-14, 09	Mar-31, 10	\$67,567.50	3	Sep-30, 10	\$288,147.30
		<b>Sub-Total</b>	<b>\$67,567.50</b>		<b>Sub-Total</b>	<b>\$288,147.69</b>
<b>Consultant 5</b>						
Contract 1	Oct-13, 09	Jan-15, 10	\$52,920.00	2	Sep-10, 10	\$183,015.00
Contract 2	Sep-23, 10	Jan-25, 11	\$99,793.55	1	Mar-31, 11	\$123,274.39
		<b>Sub-Total</b>	<b>\$152,713.55</b>		<b>Sub-Total</b>	<b>\$306,289.39</b>
<b>Consultant 6</b>						
Contract 1	Dec-02, 10	Mar-31, 11	\$66,444.00	2	Oct-24, 11	\$66,444.00
Contract 2	Oct-12, 11	Jun-30, 12	\$88,094.57	0	Jun-30, 12	\$88,094.57
		<b>Sub-Total</b>	<b>\$154,538.57</b>		<b>Sub-Total</b>	<b>\$154,538.57</b>

68. OPO sought to determine whether the CSPS THS service procurement practices used for the comparative contracts were consistent with government policies and conducted in a fair, open and transparent manner. OPO also sought to determine whether the procurement practices regarding these eight contracts differed from those of the original six contracts. OPO analysis revealed that the CSPS's procurement practices were similar regarding both sample sets.
69. Five of the comparative sample contracts were awarded using the THS SA tool. The remaining three contracts were issued using the THS SO tool.

### The CSPS Did Not Always Follow Contracting Policies and Guidelines

70. OPO found numerous examples of where CSPS procurement practices were not consistent with contracting policies or guidelines with respect to the eight contracts that were the comparative sample.
71. Six of the eight comparative contracts required specific approvals for exceeding the 20 week/\$89,000 limit. The requisite approvals were granted and the contracting proceeded in five cases. In the remaining case, the PM advised the PCU that “[m]anagement has decided to reduce the duration of the contract...”. The length of the requirement was reduced to 18 weeks. However, the contract was subsequently amended and an additional 9 weeks were added. The final value of the contract was therefore raised back up to 99 percent of the pre-reduced estimated value. OPO notes that, as a result of these activities, the matter was only brought to the attention of senior CSPS staff charged with contracting oversight when the amendment was considered, i.e., not until after the contract had already been awarded.
72. In two separate instances, documentation on the file of one contract clearly indicates the initiation of a separate follow-on contract when an amendment to that original contract was being considered. Proceeding with new contracts for fundamentally the same work, instead of issuing amendments that would have exceeded the \$89,000/20-week limits, resulted in the matter not being brought to the attention of senior CSPS staff charged with contracting oversight.
73. For the following examples, OPO believes it would also have been reasonable for CSPS management to have been informed about possible breaches of contracting policies/procedures. However, with one noted exception, it was not:
  - i. Contract splitting –The comparative sample contained one set of three contracts and one set of two contracts which OPO believes should have been competed as two, single contracts.
  - ii. Unfair evaluation practices – In four cases, the supplier’s bid appears not to have met at least one mandatory requirement. There was only one file containing evidence of the PCU verifying the PM’s assessment of a winning bid, and in that case, even though the proposed consultant did not meet two mandatory criteria, the contract was still awarded.
  - iii. Contracts amended on numerous occasions – one contract was amended three times.
  - iv. Repetitive contracting – two of the consultants received multiple contracts for essentially the same work.
74. A properly signed, timely Checklist was only found in two of the comparative sample contract files and there were no Checklists provided for any of the 11 amendments issued in relation to the comparative sample.
75. OPO considers the CRC should have been made aware of three of the comparative sample contracts. Only one comparative file made note of the applicability of the CRC and the file was approved by the CRC.

## The CSPS Did Not Properly Compete, or Define, its Requirements

76. A review of the comparative sample files revealed the CSPS did not properly compete most of the comparative requirements; the files lacked evaluation information and the CSPS did not make the suppliers aware of the full extent of the requirements in some cases.
77. In order to maximize the number of potential suppliers, federal organizations should ensure the RFSs are competed in the proper THS category. For example, a federal organization will have a larger pool of bidders with consultants having financial advisor experience if the organization uses the THS “Financial Management” category instead of the “Human Resources, General” category.
78. In five of the eight comparative cases, the RFSs’ duties and tasks were sufficiently removed from the THS category requirements that OPO does not consider it appropriate for those requirements to have been competed under their particular THS categories. This resulted in a significantly reduced pool of available consultants and withholding opportunities from those companies with consultants in the “correct” category.
79. In five of the comparative sample files, in apparent contravention of the CSPS procurement policies, the PM’s organization sent the RFS to suppliers without being reviewed or vetted by the PCU.<sup>3</sup> In four of those cases, the PM’s organization included the additional terms and conditions normally added by the PCU but, in one case, it did not; merely sending a list of mandatory criteria that had to be met by a bidder. Of those five cases, the results from four of the bid evaluations were sent to the PCU, who subsequently awarded the contract. In one case it appears the call-up was issued by the PM’s organization and the file contains no information about the supplier selection process. It only contains an e-mail from the PM indicating that he had reviewed four consultants’ CVs and wished to interview two of the proposed consultants. The file then indicates that the interviews took place and the PM had selected the successful candidate. OPO considers that, had the PCU been given the opportunity, and had properly exercised its duties, these issues may have been alleviated.
80. In five of seven cases where bids were solicited, the file documentation provided by the CSPS indicates the bid period requirements were met. There was one case in which suppliers were given 45 ½ (instead of 48) hours to submit bids. In the second case there was nothing in the file about the solicitation process (who was invited to bid, how long was the bidding period, what were the contractual terms and conditions of any RFS, etc).
81. In only one case did the PM provide more than an email and a “Y[es]” or “N[o]” evaluation grid to explain why a particular consultant was disqualified and in no case did the PCU require substantiation to indicate how a proposed consultant met the requirements. As will be discussed below, in four instances, the documentation on the file indicated the proposed consultant did not meet at least one mandatory criterion and should not have been awarded the contract.

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<sup>3</sup> . For a sixth comparative file, documents do not allow OPO to determine who sent the call-up to the SO holder.

82. Not all of the comparative sample contracts were awarded using the THS SA. Three of the comparative sample contracts were call-ups issued against the THS SO. The THS SO methodology for selecting suppliers is the “right of first refusal”, meaning the CSPA should have sent their requests to the lowest priced SO holder in that category. If that SO holder could not respond or had no consultants available for that specific requirement, then the CSPA could request a consultant from the next lowest priced SO holder on the list and so on, until a suitable consultant has been identified.
83. The CSPA deviated from the prescribed solicitation process and sought bids from multiple companies on two occasions, once including the lowest-priced and second lowest-priced suppliers and once it appears it did not.<sup>4</sup>
84. A third THS SO call-up was issued directly to the supplier. In that file, the CSPA noted that the hourly rate was not the lowest available but that it was issuing the call-up to the company because “[Consultant name] has extensive experience in the items listed in the SOW”. There was no indication on the file of how much more the CSPA paid to obtain the services of that particular consultant, compared to the lower-priced suppliers which should have been afforded the chance at fulfilling the requirement.
85. In the comparative sample, three of the contracts had their values significantly augmented:
  - a. In one case, the original 450 hour contract was amended up to 1919 hours;
  - b. In another case, the original 487.5 hour contract was amended up to 1245 hours; and,
  - c. In the third case, the RFS was sent out for an estimated 900 hours of work, but the contract was awarded for 637.5 hours which kept it under the 20 week limit. The contract was subsequently amended to a total of 787.5 hrs.

#### **The CSPA Awarded Contracts to Suppliers Whose Bids Did Not Meet the RFS Requirements**

86. There were four cases in the eight comparative sample files for which contracts were awarded to suppliers whose bids did not appear to meet all the mandatory requirements of the RFSs.
87. One of the comparative RFSs required a “secret” security clearance. The successful supplier’s bid stated that its proposed consultant had applied for a lower level “enhanced reliability” security clearance on the day its bid was submitted to the CSPA. The contract was sent to the bidder for signature shortly after the bid was submitted, with an “enhanced reliability” security level. There was nothing on the file to indicate that the CSPA had confirmed whether any security clearance had been granted, nor was there an explanation as to why the RFS and contract had different security levels.

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<sup>4</sup> . Based on the prices listed in the evaluation grid provided by the PM to the PCU, none of the suppliers that submitted bids were the lowest priced in that category. There is nothing on the file, however, to indicate that the lowest priced suppliers were *not* invited and did not submit to bid.



88. In another case, the CSPS issued the call-up to the company because the consultant allegedly had “extensive experience in the items listed in the SOW” yet OPO could not find such experience in the consultant’s CV found on the file.
89. In yet another case, the evaluation results clearly noted that the proposed consultant did not meet either of the two mandatory knowledge requirements, yet the contract was still awarded to that supplier.
90. In the final case, the consultant was required to have a degree in Public Administration but the consultant’s CV stated that he had taken courses in Public Administration, with no reference to actually having the mandatory degree.
91. The inability of bids or CVs to demonstrate the proposed consultants met mandatory criteria should have led to the disqualification of those bidders but there was no information in any file to indicate why those bids were not disqualified.

### **The Lack of Documentation on the Files**

92. The comparative sample files were similarly lacking documentation had numerous examples where the CSPS did not maintain adequate documentation on the files to explain or justify decisions made.
93. Had the files been properly documented, OPO would have been able to understand why the CSPS made certain decisions, specifically:
  - a. Regarding the two cases where bids were solicited under the THS SO - why were bids solicited instead of following the “right of first refusal” as required by the THS SO tool?
  - b. In the case where the call-up was issued directly to the supplier – why/how did the CSPS determine that the consultant had “extensive experience in the items listed in the SOW”, when the CV on the file does not appear to demonstrate such experience?
  - c. Regarding the four cases where OPO considers the contract to have been awarded to a supplier who did not meet all mandatory conditions – what justification was there to allow the CSPS to overlook the deficiencies, specifically:
    - i. For the case where the requirement was for a “secret” security clearance in the RFS and the contract awarded at the “enhanced reliability” level - nothing on the file indicates the consultant had the lower level clearance or why the security requirement changed from the RFS to the contract.
    - ii. For the case where the consultant did not have the necessary education degree listed in the RFS – did the CSPS confirm that the consultant had the degree, even though it was not noted in the CV? OPO notes that this requirement was removed for next contract in this series.
    - iii. For the case where the consultant did not meet two mandatory knowledge components of the RFS – did the CSPS re-evaluate the consultant’s CV and determine that the consultant had the necessary knowledge?

- iv. For the case where the experience listed in the CV did not appear to meet the RFS's experience requirements – how did the PM determine that the consultant met the requirement?

### OPO Conclusions on the Comparative Sample

94. OPO noted issues in the comparative sample files similar to those found in the original six files. This indicates a pattern of procurement practices that raise concerns from a fairness, openness and transparency perspective.

### Final Conclusions

95. OPO notes many of the findings regarding both the original and comparative files are similar to what was noted in OPO's report entitled: *Acquisition of Training Services by the Canada School of Public Service*. In that report OPO raised concerns with respect to the CSPS favouring an existing contractor by issuing repetitive sole source contracts and contract splitting.
96. In the present review, OPO found sufficient evidence to suggest favouritism occurred in the awarding of the original contracts. The conditions which lead to this conclusion were also found in the comparative sample
97. Based on a review of the documents associated with this review, the CSPS appears to have an appropriate procurement policy framework that could, to a large extent, alleviate many of the issues noted in this review. The CSPS contracting policy documents spell out the respective roles of the PMs, the PCU and CSPS senior management. One key aspect of these policies is the challenge function that should be exercised by the PCU. OPO considers that, if the PCU had been involved and, when involved, fulfilled its role in ensuring that policies were being adhered to, the CSPS procurement practices would be consistent with Treasury Board policies and support the principles of fairness, openness and transparency.
98. In all contracts reviewed, both the PCU and the PM were part of the CSPS's corporate services branch. This is a standard occurrence in many federal organizations; nonetheless, it raises potential concerns given both procurement officers and program managers are part of the same unit and, ultimately, report to the same position. OPO considers the challenge function to be exercised by the PCU may have been compromised, in part, because of the fact both the PCU and PM were part of the same unit. Based on the documentation provided by the CSPS, the PCU was noticeably silent, in comparison to OPO's findings in the previous review. Given the inherent concerns of having both procurement specialists and program managers in the same unit, it is critical for oversight mechanisms such as contract review committees to diligently exercise their responsibilities.
99. The lack of detail in the CSPS files regarding supplier selection and evaluation results provides little information demonstrating the THS terms and conditions, and CSPS and Treasury Board policies, had been consistently followed.

100. Through this review, OPO has noted CSPS procurement practices were not consistent with, or represented risks to, fairness, openness and transparency.

### **Fairness**

101. Fairness requires providing equal treatment to all current and potential suppliers. By not providing the full scope of the requirements, by not using proper THS categories and by accepting proposals which should have been disqualified, the CSPS undermined the fairness of the processes.
102. OPO conclude that, in five of the original six cases and five of the eight comparative sample cases, there were errors in either the solicitation process (e.g., the SOW did not align with the THS category) or the evaluation (i.e., determining that a bid met all mandatory criteria when it did not). These errors appear to have allowed the CSPS to use the THS SA and THS SO tools to facilitate the awarding of contracts to the preferred suppliers.
103. In four of the original six cases and four of the eight comparative sample cases, the CSPS evaluation resulted in the awarding of the contract to a supplier whose bid did not meet the mandatory criteria of the RFS. The CSPS should have disqualified the eight “winning” bids for these improperly awarded contracts and, if there were no other compliant bidders (there was only one instance where a second compliant bid was submitted), run another solicitation process. OPO considers one of the benefits of the THS tools is the short bid solicitation period. As noted above, federal organizations can require bids to be submitted by 5:00 p.m. the day following the issuance of an RFS.

### **Openness**

104. Openness requires providing all potential suppliers with the opportunity to submit bids for government procurement. OPO found evidence the CSPS has engaged in contract splitting and used the THS SA and THS SO tools to issue repetitive contracts to the same suppliers.
105. OPO found five comparative sample cases where the SOW did not match the THS requirements, leading to the requirement being competed in the wrong THS category. This meant that suppliers in the proper THS category were denied the opportunity to submit bids because they were unaware of the requirement.

### **Transparency**

106. Transparency requires providing information to Canadians in a timely manner that facilitates public scrutiny of the decisions made and actions undertaken. As noted above, the lack of documentation on the files shows the CSPS was non-compliant with its own guidance. More importantly, it makes it difficult for the CSPS to demonstrate it properly followed all relevant policies and procedures.

### **Recommendations**

107. The CSPS should review, update as required and fully implement the organization’s management control framework to ensure it is respecting internal and Treasury Board contracting policies and requirements.

## Departmental Perspective

108. In accordance with section 5 of the *Regulations*, the Procurement Ombudsman provided the CSPA the opportunity to comment on the proposed recommendations of this review and the reasons for them. The CSPA informed OPO it has taken a number of measures to address the concerns highlighted in this review.
109. The CSPA has launched an administrative investigation to review its current policies, practices, controls and activities in several areas, including contracting and procurement. It advised that upon the completion of the administrative investigation, a comprehensive action plan will be developed and implemented to address any deficiencies, especially with respect to procurement policies and practices, and to support a culture that respects the role of procurement specialists. The action plan will provide the deputy head of the CSPA with assurances that the organization's policies, practices, governance and controls are appropriate, decisions are well documented, and the oversight role of the procurement officers is effective.
110. The CSPA also advised that financial delegation regarding contracting had been restricted so that signing authority is limited to the President and Vice-Presidents of the organization. The CSPA has also established a CRC to review all contracting needs and proposals and make recommendations directly to the President. The CSPA has also engaged an experienced Manager of Procurement, with the task of providing training to all of the CSPA managers on procurement policies and best practices. This training is mandatory for all managers at CSPA. Additionally, the CSPA has hired a contracting expert to provide: recommendations on procurement strategies for the CSPA; recommendations concerning the functioning of the CRC and procurement contracting unit; and advice to render the procurement processes more efficient, transparent, open and fair.

## List of Acronyms

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CRC	Contract Review Committee
CSPS	Canada School of Public Service
CV	Curriculum Vitae
NTF	Note to File
OPO	Office of the Procurement Ombudsman
PCU	Procurement & Contracting Unit
PM	Program Manager
PWGSC	Public Work and Government Services Canada
QA	Quality Assurance
RFS	Request for Services
SA	Supply Arrangement
SO	Standing Offer
SOW	Statement of Work
THS	Temporary Help Services