



***Office of the Procurement Ombudsman***

**Canadian Procurement Council Forum 2009**

**Presentation from**

**Mr. Shahid Minto**

**Procurement Ombudsman**

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***Strengthening the Confidence of Canadians in Public  
Procurement***

# Outline

- **Introduction**
- **The Office**
- **Procurement Practices Review**
- **Procurement Inquiries and Investigations**
- **Alternative Dispute Resolution (ADR)**
- **Communications & Corporate Management**
- **Quality Assurance & Risk Management**
- **Looking to the Future**

# Creation of the Office

- **Response to a Government priority**
  - Federal Accountability Act (December 2006)
  - Procurement Ombudsman Regulations (May 2008)
  - Appointment of the Procurement Ombudsman (May 5, 2008)
  - Mandate will not change unless there is a legislative amendment
- **Goal: strengthening the confidence of Canadians in public procurement**
- **Government-wide Mandate**
  - Annual Report tabled in Parliament (summaries of findings and recommendations)
  - Three pillars:
    - Practice Reviews
    - Complaints
    - Alternative Dispute Resolution
- **Further details at: [www.opo-boa.gc.ca](http://www.opo-boa.gc.ca)**

# Establishment of the Office

- **Establishing Trust / Principles:**
  - **Independent:** arm's length from government departments
  - **Neutral:** neither lobbyist for suppliers nor apologist for government departments
  - **Helpful:** seeking to improve procurement to the benefit of all stakeholders
  - **Knowledgeable:** about workings of Canadian market, government procurement legislation, policies and practices, and the issues and concerns that need to be addressed
  - **Responsive:** quick to act in a non-judgmental manner

# Establishment of the Office

- **Our comittment is to be part of the solution**
  - To seek resolution of individual concerns to the satisfaction of all involved; and
  - To make balanced and useful recommendations to strengthen the fairness, openness and transparency of government procurement as a whole
- **Our Business Model**
  - Collegial and cooperative approach with stakeholders (suppliers, departments & agencies, parliamentarians) to help communications in order to facilitate speedy resolution of issues
  - Focus of the model is « Did you do the right thing »?

# Procurement Practices Review

- **Systematic, evidence-based approach to carry out independent, objective reviews**
- **How we select the topics for reviews:**
  - Issues raised by suppliers and departments
  - Issues raised in the media
  - Canadian International Trade Tribunal Determinations
  - Reports of the Auditor General and Comptroller General
  - Internal audit reports of various departments
- **In 2008-2009 five Procurement Practice Reviews:**
  - Procurement Challenge and Oversight
  - Supplier Debriefings
  - Advance Contract Award Notice (ACAN)
  - Mandatory Standing Offers
  - CORCAN
- **Full reports available from OPO website: [www.opo-boa.gc.ca](http://www.opo-boa.gc.ca)**

# Procurement Challenge and Oversight

- **A key component of management controls; often exercised through a senior procurement review committee**
- **Effective practices identified in the report; generally satisfied with progress to establish effective oversight committees**
- **Areas for improvement, among others:**
  - Past vendor performance information
  - Multi-department submissions require approval by all participants
  - Directing contracts using ACANs poses a special risk

# Supplier Debriefings

- **Suppliers not aware of:**
  - their right to request a debriefing on strengths/weaknesses of their bid
  - legal obligations and constraints on what information can be made available to whom
- **No consistent standards across and within government for content, nature and extent of debriefing**
  - Recommend creation of « safe zone »
- **Capacity issues**
  - Concern that publicizing the right to debriefing will increase the demand for debriefings
- **Skills and competencies issues**

# Advance Contract Award Notice (ACAN)

- **Introduced to strengthen transparency aspects of directed contracts**
- **Issues:**
  - Majority of files inadequately documented
  - Significant number of cases where ACAN issued contrary to TB Contracting Policy
  - Minimum 15 days for publication of ACAN implemented as a maximum
  - Negotiations with the pre-identified supplier before the closing date
  - Significantly higher contracting approval authorities, with potentially less oversight, dilutes a major control mechanism to mitigate associated risks
- **Recommendations:**
  - Reinforcing compliance with existing standards
  - Clarification
  - Standardization
  - Need to re-think the ACAN policy

# Mandatory Standing Offers

- **One of the measures to help lower government procurement costs by using its size to get the best possible price**
- **This is the first in a series of reviews on the subject of standing offers**
- **Issues:**
  - **Access to business opportunities:** A supplier who does not have a Standing Offer has limited opportunity to do business directly with the government until the SO is discontinued or competed again
  - **Term of SO:** PWGSC policy: one year, and if required one-year extensions. Guideline not a standard, seldom followed.
  - **Usage data and analysis:** unnecessary data collection (predominantly from suppliers), data reliability/integrity, inconsistent analysis and use of data to support decision making
- **Recommendations:**
  - Clarify policy by establishing period standard and providing guidance to achieve balance between government objectives and principles of access, openness & fairness
  - Work with departments to improve usage reporting integrity and timeliness
  - Analyze supplier reports and eliminate unnecessary reporting
  - Ensure adequate level of resources, proper training and succession planning

# CORCAN

- **OPO contacted by a supplier making several allegations of violations of TB policies for contract award and contract administration at CORCAN.**
- **Significant flaws in procurement practices such as:**
  - short bid solicitation period (3 days)
  - lack of an evaluation methodology in the bid solicitation
  - lack of appropriate controls to manage a known conflict of interest situation
  - lack of required documentation in procurement files
  - appearance that financial and contracting authorities were exceeded
- **Management acted responsibly and prudently when matter was brought to their attention by the OPO. They developed an appropriate and detailed management action plan.**
- **Recommendations:**
  - CSC review its other construction contracts
  - CSC assess the need for training
  - CSC review the appropriateness and legality of the B2B procurement method (a business-to-business alliance agreement) in consultation with PWGSC and TBS

# Procurement Inquiries & Investigations

- Encourage suppliers to contact the relevant department to try to resolve their issues directly before involving OPO
- Once we're involved, we encourage suppliers to discuss their issues with us and allow us the opportunity to find quick and acceptable solutions through informal means before filing a formal complaint for investigation
- Only one formal investigation initiated in 2008-2009; so far this year one formal investigation

**Toll-Free: 1-866-734-5169**

# Procurement Inquiries & Investigations

- **Activity 2008/2009:**
  - **Contacts:**
    - 355 inquiries from May 2008 to March 2009 (Procurement 62%, Non-procurement 38%)
    - Procurement:
      - Communication inquiries: 41
      - General inquiries: 66
      - Informal opinion/assistance: 2
      - Complaints: 106
      - ADR: 4
  - **Complaints:**
    - Contract Award: 71
    - Contract Administration: 35

# Alternative Dispute Resolution (ADR)

- If ADR process exists within concerned department, we encourage parties to try that avenue first
- OPO process is confidential and voluntary – both parties must agree to participate
- Either supplier or government department can request assistance from OPO
- Disagreement centres on application or interpretation of Ts&Cs
- 3 options:
  - **Facilitation** - establish communication between the parties, encourage movement towards understanding each other's position and a mutually acceptable outcome. Third party is usually someone from OPO (no charge)
  - **Mediation** - assistance to both sides in an attempt to reach a mutually acceptable outcome. Third party is not from OPO (costs borne by one or both participants)
  - **Non-binding arbitration** - hear both sides and render a non-binding, written decision. Third party is not from OPO (costs borne by one or both participants)

# Alternative Dispute Resolution (ADR)

- **OPO has strived to create ADR services that:**
  - Are fair, open, transparent, and timely, and applied in a consistent and professional manner
  - Constitute effective and useful communication to educate both parties, so that they are working with the same information
  - Recognize and address power imbalances
  - Provide access to and flexibility of appropriate options to resolve conflicts at every stage of the dispute
  - Result in resolutions that are equitable and fair, that both sides will honor
  - Satisfy both parties that they have been engaged in the process and involved in the outcome

# Communications & Corporate Management

- **Outreach Program**
  - Individual suppliers & supplier associations
  - Government procurement community
  - Trade and professional publications
  - Conferences and other speaking engagements
  - Daily monitoring of media
- **Management of the office**
  - MOU with PWGSC
  - PWGSC provides corporate services to the OPO on a fee for service basis
  - The Procurement Ombudsman carry out his mandate in an impartial & independent manner and is accountable for decision making

# Quality Assurance & Risk Management

- **Quality assurance & risk management**
  - Ensures quality is built into all our processes
  - Controls in place to identify and respond to risks in a timely manner
  - Responsibilities are clearly defined and communicated
  - All staff participate in continuous improvement
- **Environmental scanning**
  - Conduct research on procurement matters to stay abreast of developments, trends, effective practices, lessons learned
  - Liaise with government departments, central agencies, suppliers, academic institutions and professional associations to maintain current awareness of procurement practices, risks, interests, concerns
  - Analyze the information for the influence it has had or may have on federal procurement practices and the activities and interests of suppliers
  - Training, coaching and support to staff within the Office to ensure a current and balanced understanding of developments in the field.

# Looking to the Future

- **Ensure that the collaboration with stakeholders continues to grow**
- **Respond to requests from stakeholders seeking our assistance**
- **Conduct more practice reviews**
- **Develop our ADR services further**
- **Maintain focus on ‘doing the right thing’**