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Chair: Mr. Robert Kitchen



Standing Committee on Government Operations and Estimates

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• (1605)

[English]

The Chair (Mr. Robert Kitchen (Souris—Moose Mountain, CPC)): I call the meeting to order. I apologize for taking so long. There were a few challenges.

Welcome to meeting number four of the House of Commons Standing Committee on Government Operations and Estimates. Today we'll receive a briefing from the procurement ombudsman.

Today's meeting is taking place in a hybrid format, pursuant to the House order of November 25, 2021. Members are attending in person in the room and remotely using the Zoom application. Regarding the speaking list, the committee clerk and I will do the best we can to maintain a consolidated order of speaking for all members, whether participating virtually or in person.

I will take this opportunity to remind all participants in this meeting that screenshots or taking photos of your screen is not permitted.

Given the ongoing pandemic situation and in light of the recommendations from public health authorities, as well as the directive of the Board of Internal Economy on October 19, 2021, to remain healthy and safe, the following is recommended for all those attending the meeting in person.

Anyone with symptoms should participate by Zoom and not attend the meeting in person. Everyone must maintain two-metre physical distancing, whether seated or standing. Everyone must wear a non-medical mask when circulating in the room. It is recommended in the strongest possible terms that members wear their masks at all times, including when seated. Non-medical masks, which provide better clarity over cloth masks, are available in the room.

Everyone present must maintain proper hand hygiene by using the hand sanitizer at the room entrance. Committee rooms are cleaned before and after each meeting. To maintain this, everyone is encouraged to clean surfaces such as the desk, chair and microphone with the provided disinfectant wipes when vacating or taking a seat.

As the chair, I will be enforcing these measures for the duration of the meeting, and I thank members in advance for their co-operation.

Just to touch on a bit of committee business before we start, I wish to speak to members about the meeting of the committee taking place next Tuesday, February 15, 2022. We had planned on

starting our study on air defence procurement. However, we will not have had time to contact witnesses after the members' witness suggestions are submitted on Friday, February 11.

The analysts have noted that the Office of the Auditor General has written reports relevant to the committee's study of air defence procurement and the national shipbuilding strategy. To ensure that we have witnesses present for next Tuesday, I instructed the clerk to contact the Auditor General's office. They have responded by saying that the Auditor General is interested in appearing but not available. However, representatives of the Auditor General's office can appear on Tuesday, February 15, to discuss their reports related to the committee's studies of the air defence procurement and the national shipbuilding strategy. Just so you're aware, many of those officials were involved quite extensively before this, a couple of years ago, so they can provide information.

If anyone has any questions about this, please contact me or the clerk.

I will now invite the procurement ombudsman to make his opening statement, recognizing that he doesn't have a microphone. We do have two hours, so I will ask you to speak slowly so that the interpreters can get your message out and not have challenges in doing that.

That said, I turn the floor over to you, sir.

Mr. Alexander Jeglic (Procurement Ombudsman, Office of the Procurement Ombudsman): Thank you very much, Mr. Chair.

I'll start today by acknowledging the traditional and unceded territory of the Anishinabe people of the Algonquin Nation on which we live and work here in Ottawa.

Thank you, Chair and members, for inviting me back to the committee. It is my pleasure to be here, and I hope I can be of assistance.

I'm joined today by the following members of my office: David Rabinovitch, who I believe is also experiencing a little technical difficulty, who's the deputy procurement ombudsman; Margherita Finn, also experiencing technical difficulty, who is the director of procurement inquiries; Amy Dubeau, director of communications; Derek Mersereau, procurement practices review manager; Alain Bazinet, procurement practices review manager; Michael Morden, procurement review manager; Chelsea Young, senior risk adviser; Melissa Cianflone, senior risk adviser; and James McAdam, analyst.

Each of those present with me today has played a key role in one of the reports recently released by my office.

[*Translation*]

The COVID-19 pandemic has radically changed the way in which we live and work.

I would like to thank the public servants in all orders of government, all over Canada. Whether in IT, in translation or in administration, they are professionals who have made it possible to work remotely, so that, for example, this committee can do its important work.

• (1610)

[*English*]

I will talk just a little bit about the role and mandate of my office. I would like to start by explaining my role in federal procurement, as some of you were not part of the committee when I was last here almost two years ago.

The Office of the Procurement Ombudsman opened in 2008, with a focus on providing small and medium-sized businesses an avenue of recourse for procurement and contracting issues. My office operates at arm's length from other federal organizations, including Public Services and Procurement Canada. We purchase services related to human resources, finance and information technology, and select other government and corporate services from Public Services and Procurement Canada through service-level agreements.

I report directly to the Minister of Public Services and Procurement, and the minister is required to table my annual report in Parliament. While I report to the Minister of Public Services and Procurement, the minister has no involvement in my office's daily activities or the content of my reports.

Specifically, my legislative mandate can be broken down into four sections.

One is reviewing complaints regarding the award of certain contracts for goods below \$30,300 and services below \$121,200. This is when a Canadian business files a complaint about the award of one specific contract. It's usually a supplier who bids on a federal contract, is not awarded the contract and is not satisfied with the department's explanation. For contracts at or above these dollar-value thresholds, the supplier can seek redress through the Canadian International Trade Tribunal.

Two, we can review complaints regarding the administration of certain contracts, regardless of dollar value. We rarely receive this type of complaint, but when we do, it most often pertains to late payment or non-payment.

Three, we can review departments' practices for acquiring goods and services to assess their fairness, openness and transparency and make recommendations for improvement. These are usually systemic reviews, where we look at roughly 40 procurement files and opine on how the department is conducting its procurement activities overall. There are no dollar-value limitations associated with these systemic reviews, and they include both high- and low-dollar-value procurements.

Four, we provide alternative dispute resolution services, like mediation, to suppliers and federal organizations involved in a contract dispute when both parties agree to participate. This is a highly successful and effective service offered by my office, which is unfortunately underutilized by federal departments. Like our systemic reviews of 40 procurement files that I just mentioned, there are no dollar-value threshold limitations associated with our mediation services. We can mediate contracts valued at \$6,000 or \$60 million.

As you can see, my legislated mandate is quite specific.

In October 2020, my office signed a memorandum of understanding with the Canadian International Trade Tribunal to ensure that Canadian businesses are granted easier access to available complaint redress mechanisms and made aware of the time frames within which they must file complaints with either my office or the CITT.

[*Translation*]

The neutral and independent Office of the Procurement Ombudsman has never been so important.

[*English*]

To further improve the effectiveness of my office, I've proposed changes to some of the procurement ombudsman regulations. I would like to request that the procurement ombudsman be able to recommend compensation of more than 10% of the value of a contract, up to the amount of the actual lost profit incurred by a complainant. I'd also like to be able to compel rather than ask or request departments to provide documentation necessary for my office to conduct reviews, and that the name of my role and my office be changed from "procurement ombudsman" to "procurement ombudsperson" to better reflect the community I serve.

I would also like to propose an additional change that was not raised in my last annual report, which is that suppliers bidding on contracts awarded under the procurement set-aside for indigenous businesses be given a right of recourse to my office in the event issues arise. I believe that when the set-aside program for indigenous businesses was created, it was not well understood that complaints arising under this program would be outside the jurisdiction of my office and the Canadian International Trade Tribunal. This is a systemic barrier that must be removed.

I also want to make sure procurement stakeholders are aware of how my office can help resolve federal contract disputes.

[*Translation*]

Despite the restrictions that prevent gatherings in public, my office has continued to make contact virtually with stakeholders in federal procurement. We do so to let them know about our services and to provide them with a platform on which to share their experiences.

[English]

We also continued to host our annual summit on diversifying the federal supply chain, to connect suppliers with government and private sector organizations whose services can help them better understand federal procurement and obtain federal contracts. We recently held our fourth summit on January 26-27, which attracted more than 800 participants over the two days.

When we started this summit in 2019, there were limited Government of Canada events that brought together the various government programs and initiatives in one place for suppliers to learn what supports may be available to them. Over the years, we have now begun to see an increase in other supplier diversity events hosted by federal organizations. However, the continued increase in participation and registration at our summit indicates the continued and growing importance of our summit.

The federal procurement realm can often seem daunting to suppliers, and navigating through the various departmental programs and initiatives can be challenging. Our summit offers a “one-stop shop” for suppliers to learn about many of the Government of Canada business supports available to diverse and indigenous-owned businesses.

- (1615)

[Translation]

I have also written to the senior administrators of 83 departments, asking them to add standard language on the availability of the services of the Office of the Procurement Ombudsman, the OPO, to their bid documents, their contracts and their regret letters.

Most small and medium-size businesses that could take advantage of our services are not aware that we exist. There is no better way to remedy that than to include references to our services directly in the procurement documents.

The intent of that language is to provide suppliers with clear information on the way to file a complaint with my office, or to call on our dispute resolution services if there is a problem.

[English]

We regularly hear from Canadian suppliers, including small and medium-sized business owners and diverse business owners, about the challenges they face when doing or trying to do business with the Government of Canada. My office compiles the issues brought to us by stakeholders at outreach events, through our website or through our intake team into a top-10 list that we include in our annual reports. This list ensures that federal decision-makers are aware of the most common concerns expressed by procurement stakeholders and enables them to develop practical solutions to the issues raised.

For each inquiry or complaint that my office receives, we explain our mandate to the supplier in case they need our investigation services or our mediation services. We provide them with an answer directly or point them to an organization that can do that, such as CITT, the Competition Bureau or the Information Commissioner. As always, we will be there to review complaints and to provide mediation services so that businesses and departments can get back to business.

My office has a successful track record in mediating contract disputes, and I urge all of you, especially any suppliers listening, to contact us in the event you need assistance in resolving a dispute during the performance of a federal contract. My office remains committed to helping our stakeholders in any way we can. That includes connecting them with the right resources when their issues fall outside our prescribed legislated mandate.

To help our stakeholders better understand key issues in federal procurement, my office conducts research studies on knowledge deepening and sharing. During the early stages of the COVID-19 pandemic, my office published a study on emergency procurement to inform both federal departments and suppliers of how emergency procurement practices have been utilized in response to past disasters. Building on our study on emergency procurement, we also published another study on *force majeure* to provide some clarity to the federal procurement community about the legal framework related to a *force majeure* clause in the context of emergency procurement.

In closing, I would like to thank committee members again for inviting me and giving me the opportunity to speak about our office's services to Canadians. I urge you to let businesses in your ridings know about the existence of our services should they ever encounter issues or disputes regarding federal procurement.

I'd now be pleased to answer any of your questions.

Thank you.

The Chair: Thank you, Mr. Jeglic. I appreciate that.

Just as a reminder, when you answer questions, please slow down a little bit. It's just a little bit easier for the interpreters. I know you want to get that information out quickly, but it would be appreciated.

Mr. Alexander Jeglic: Sure.

The Chair: We will go to our first round, and it will be six minutes. We'll start with Mr. Paul-Hus.

[Translation]

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

Good afternoon, Mr. Jeglic. Thank you for joining us.

You will have no difficulty answering my first question. We know that your mandate is limited to contracts valued lower than \$30,300 for goods and \$121,000 for services.

Do you feel that those thresholds should be raised, given the amounts we deal with today?

Mr. Alexander Jeglic: Thank you for your question. I will reply in English, if I may.

[English]

I think the question is clear whether we should be able to raise our monetary thresholds. I think the answer is equally clear, and the answer is no. The CITT has a clear mandate at or above those thresholds, and as a result of free trade obligations there is a requirement for a mechanism to resolve those disputes. It makes the most logical sense for them to retain that jurisdiction and for us to be mindful of why we were created, which was to provide a redress mechanism for those suppliers who didn't have one with the CITT.

• (1620)

Mr. Pierre Paul-Hus: Thank you.

[Translation]

Your 2019-2020 report indicates that you reviewed four of the top 20 federal departments. In 53% of the competitive solicitation processes, there was only one bidder.

How do you explain that?

[English]

Mr. Alexander Jeglic: That's also a great question.

I think it was brought to our attention, so it wasn't something we were expecting to study; it was simply something that came across our review. When we were doing our three lines of inquiry, we did notice that in many competitive solicitations there was only one successful supplier. We started to analyze why that would be, and we boiled it down to a question of simplification.

The primary answer is that the process is so complicated that it doesn't really incentivize competition. But the second reason—and this is something we have also heard—is that suppliers, particularly in service contracts where there is an incumbent, typically are not interested in participating in the process because they find it very time-consuming and believe that the incumbent has an advantage, and therefore don't participate in the process. While that hasn't been fully vetted, those were our suspicions as to why we were seeing that high number of single bids in competitive processes.

[Translation]

Mr. Pierre Paul-Hus: So the process is too complicated.

Given that the process is so complicated, are there a lot of companies that do not have sufficient internal resources to do business with the government?

Your process shows that the same companies always submit bids, because they know how things work and are familiar with the evaluation criteria. So, often, the same companies end up selling their products.

As the ombudsman, you raised this concern in your report. Do you see a form of favouritism on the part of some departments, in always choosing the same suppliers for various reasons?

That observation is in your report. Could you tell us more about it?

[English]

Mr. Alexander Jeglic: It is a fair question. It's something that's raised by our stakeholders. It's not a conclusion that our office has reached, but it is something that we have heard.

I want to be clear that it's not something we tested for specifically, but we do look for bias in the evaluation criteria throughout all of our systemic reviews, and it is something that we see periodically.

[Translation]

Mr. Pierre Paul-Hus: Thank you.

In your two last reports, those from 2019-2020 and 2020-2021, you point out that the Department of National Defence ranks second on the list of departments with problems.

What kinds of contracts cause the Department of National Defence to have problems?

[English]

Mr. Alexander Jeglic: To be honest, I anticipated the question.

I'm not sure if David Rabinovitch has been able to join the call, but he has actually done a review of each one of the files, so I might go to David if he's on the call.

David, are you on?

Mr. David Rabinovitch (Deputy Procurement Ombudsman, Office of the Procurement Ombudsman): Yes, Alex, I'm on.

I can speak to the Department of National Defence. In 2021, we had 36 issues brought to our attention, and it says that in the annual report. I have a list of them in front of me and I'll be happy to go through a few examples, in no particular order.

In one of them, which was the first one that came to us that year, there were three contracts with DND to provide hotel rooms. The supplier was told to reserve 100 rooms and the department notified him that they would only be requiring 10 rooms. The supplier told us that he'd already put down a deposit on all 100 rooms. We looked into it. We spoke with the department and we liaised with the contract officer, and after some further digging, it was revealed that the supplier had never sent the initial invoices to the department. He consulted with his lawyer and changed his course of action, so he dropped it at his end.

In another example, a supplier submitted a quote to the department for a solicitation under ProServices, which is a supply arrangement. It's a contracting vehicle where you have pre-qualified suppliers. He hadn't heard back from the contracting officer, so he contacted our office. We contacted the contracting officer on the supplier's behalf, and the contracting officer gave a debriefing to the chief executive officer of the supplier's company. The issue there was that he hadn't received a response from the department.

Another—

• (1625)

The Chair: If you have other examples, if you could put them in writing and submit them to the committee, that would be appreciated. Send them to the clerk, so that he can distribute them to all the members. Thank you.

Do we have a point of order?

[*Translation*]

Mrs. Julie Vignola (Beauport—Limoilou, BQ): I would like the comment I am about to make to be on the record.

I understand that, in some situations, witnesses do not have microphones. Nevertheless, that makes it very difficult for their comments to be interpreted. The interpreter is making almost superhuman efforts to do the work properly.

I would like us to make sure that witnesses have headsets.

Given how difficult it is for me to hear properly, would it be possible for me to receive the entire reply in writing, please?

[*English*]

The Chair: Thank you, Ms. Vignola.

We are aware of that and we are hoping that all the witnesses will have microphones. As you've indicated, it's very important for our interpreters. It's very challenging for them. Even when we ask witnesses to speak slowly, it's still a big challenge. I appreciate that and recognize that.

We will now go to Ms. Thompson for six minutes.

Ms. Joanne Thompson (St. John's East, Lib.): Thank you, Mr. Chair.

Welcome, Mr. Jeglic.

I'm going to focus on Transport Canada. I don't know if it's you or one of your team, but whoever is best suited to answer is perfectly fine [*Technical difficulty—Editor*] of course.

As a starting point, I understand that Transport Canada has developed standardized forms, templates and processes for bidders. What is the significance of standardization?

Mr. Alexander Jeglic: I can certainly answer that question. One of the big benefits, as you can imagine, is that suppliers often sell multiple goods and services to the same and different departments. In each iteration when they participate in a solicitation process, if the process looks and feels different, then ultimately it takes additional time and effort to respond to those bids. We understand clearly that there are nuances between solicitation processes, but to the extent that the terms and conditions can remain static, it makes the system more efficient.

That was something that we noted as a positive practice within the Department of Transport.

Ms. Joanne Thompson: Thank you.

I'm going to tag another question in there, because I think it links. With regard to Transport Canada's practices, how would you say they compare with those of other departments of the same size?

Mr. Alexander Jeglic: That's a fair question, and we expected that question. We didn't actually evaluate them on a comparative basis. So [*Technical difficulty—Editor*] is at the end of the five years, and then we follow up with each department to determine whether in fact they have complied with the recommendations. At that point, we'll be issuing what looks like a report card to determine whether the compliance has met the recommendations, and at that point I'll be better positioned.

One area I can certainly highlight within Transport Canada is documentation. As I'm sure you noted, in 30 of 38 files the documentation was an issue. Now, to be fair to Transport, it was also noted that this was very much in the early days of the pandemic, and they did not have access to one of their buildings, which could have contained many of the documents that were missing.

Ms. Joanne Thompson: Thank you. That took care of one of the questions, because I did wonder about that.

I want to switch to training and ask you more generally about the importance of training to Transport Canada. Could you then link it to any recommendations you would have that relate to best practices?

Mr. Alexander Jeglic: Whenever we find issues—and in Transport's circumstance several issues were identified—certainly an aspect of that is to behave differently. Simply creating a document might not be the answer. It has to be reinforced with education. Again, just a document change alone will likely not meet with any different result. It has to be a culture change and understanding that can only be done through education. That doesn't apply to just Transport Canada. It applies to all departments and agencies. It's something that we really underscore.

If you'll allow me, I want to make one point here. The training is incredibly important, because the seminal policy that was the Treasury Board contracting policy is being phased out. It's being replaced by a directive on the management of procurement, which is more principles-based and has less granularity. Training is incredibly important to make sure that as we transition to a new environment, everyone understands what the obligations look like.

I might add that it also makes our office more important, because where the rules are clear, we're simply adjudicating the facts based on the rules. Where the rules are less clear, the interpretation that's required from our office becomes that much more significant.

• (1630)

Ms. Joanne Thompson: Thank you.

You touched on this in your opening remarks, but I want to circle back for a moment. On the closure of certain Transport Canada workspaces during the pandemic, can you link into how that would have complicated efforts to retrieve certain documents that were sought by your office? If this is the case, how have you been able to work around or rectify this?

Mr. Alexander Jeglic: Initially, we did our file reviews in person. We would physically go to the offices to do file inspection in person. Obviously, with the COVID dynamic, that has changed. We've transitioned to doing exclusively online or e-file reviews. While we appreciate that there are departments that have both e-files and paper files, many departments have successfully migrated to e-files. Rather than put a halt to our reviews, we took that into consideration.

One thing you'll likely hear me say many times today is that we report the facts. We identified the number of cases where we saw missing files, but we also noted the fact that it was during the pandemic and that this could respond to some or many of the missing files or documents in those files.

Ms. Joanne Thompson: Thank you.

In your procurement practice review of Transport Canada, you noted that there were some inconsistencies in the evaluation criteria for bids. Transport Canada responded that they would implement training activities and materials and enhance the contracting peer review process.

In your view, are these measures sufficient to respond to the concerns?

Mr. Alexander Jeglic: At a high level, yes, but ultimately I think the real determination will happen once we're able to do the follow-up review, which happens two years after the report is issued.

I don't want to presuppose until I see what was actually implemented. Once that's better understood and known, at that point we'll be able to make that determination, as I described earlier.

The Chair: Thank you, Ms. Thompson.

Ms. Joanne Thompson: Thank you so much.

The Chair: We'll now go to Ms. Vignola for six minutes.

[*Translation*]

Mrs. Julie Vignola: Thank you very much, Mr. Chair.

Thank you for joining us, Mr. Jeglic.

In your report, you point out that you did not have many complaints related to COVID-19.

Has the number of complaints related to COVID-19 increased since you produced your report?

[*English*]

Mr. Alexander Jeglic: That is a fair question. It is something we were surprised by. We were anticipating a higher volume.

I would suggest that in that first year of the report that you were highlighting, there were very few COVID-related cases. In the subsequent financial year, the cases increased, and now we're seeing a decline.

In total since the pandemic began, we've seen about 70 or so cases related to COVID-related procurement. That being said, none of them resulted in a review of complaint. None of them were fully vetted to meet all of the regulatory requirements to launch an inquiry.

David, do you want to jump in and provide just a few examples of the types of cases that we saw that were COVID-related?

Mr. David Rabinovitch: Sure, Alex, I'd be happy to.

I also want to apologize for the poor audio. Yesterday's test with the headphones was great. Today it didn't work and we're on our iPhones. I apologize if I'm not clear.

As Alex said, there have been about 70 since the pandemic started. One was on the barriers to participating in federal procurement. The supplier wanted to sell to the government, so we put them directly in contact with the office of small and medium businesses. I think they received about 30,000 calls from Canadian businesses looking to sell PPE, or personal protective equipment.

Another supplier complained about a discriminatory policy and that COVID purchases were not included in the procurement set-aside for aboriginal businesses, which is now called the procurement set-aside for indigenous businesses.

Another one was that a department did not provide a debriefing to a supplier whose bid was not accepted. In that case, we put the supplier in touch with the business dispute management group at the department, so that they could get debriefed.

Another one was insufficient bidding period—

• (1635)

[*Translation*]

Mrs. Julie Vignola: Thank you very much, Mr. Rabinovitch.

It is not possible to go through the details of 70 complaints in six minutes, but I appreciate your ample explanations.

A number of contracts are related to national security. Do contracts of that kind undermine the companies' ability to file complaints if there are problems?

You can just answer yes or no.

[*English*]

Mr. Alexander Jeglic: Certainly the implication of the national security exception does impact a supplier's ability to bring forward an action to CITT.

One thing that has been brought to our attention is that NSE continues to be an issue associated with COVID. In 2020-21, we saw 11 NSE-related cases. In the first six months of this year, we've seen seven national security exception-related cases.

That being said, we've also launched a knowledge-deepening and sharing piece specifically on the NSE to provide for a better understanding as to what exactly it means, what exactly the prospective outcomes are and how we can make considerations for making change. That piece should be published by my office before the summer of 2022. It's something that could potentially establish reasonable grounds for a subsequent systemic review related to the national security exemption.

[Translation]

Mrs. Julie Vignola: Your answers are always enlightening. Thank you for that.

In your presentation earlier, you said that most people are unaware of your services. You also mentioned the difficulty companies have in adhering to the contract awarding process, in properly understanding it, and so on. In your report, you also mention that your mediation services are not well known.

The procurement guide contains some tips to help companies and procurement officers with the contract awarding process. Nevertheless, how can we better inform small and medium-size businesses—the big ones already seems to be well informed—about your services, about the mediation that departments do not seem to be using much, and on the role of procurement officers in facilitating the process?

[English]

Mr. Alexander Jeglic: That's a great question, one that I would love to address, because it's something that has preoccupied our time from at least the outset of my tenure.

The easiest way to do this is by having specific language in contracts, solicitations and regret letters making it very clear and understandable to all suppliers that our services are available. Therefore, we've written to all deputy heads of departments and agencies under our jurisdiction asking them to include that language in those documents. We've met a certain level of success, but we'd like to see even more.

That's the primary way, but the other aspect is outreach. You mentioned small and medium-sized enterprises. You have to go—

The Chair: Mr. Jeglic, excuse me for interrupting. I apologize. Unfortunately, six minutes goes by extremely quickly, so if you have any additions to that answer, if you could provide those in writing, it would be greatly appreciated. It's a great question and we'd love to hear the answer. Thank you.

We'll now go to Mr. Johns, for six minutes.

• (1640)

Mr. Gord Johns (Courtenay—Alberni, NDP): Thank you, Mr. Jeglic and Mr. Rabinovitch, for being here.

The annual report reaffirms the office's commitment to fostering diversity and inclusion in federal procurement. You touched a little on it.

Can you talk about some of the key barriers to diverse suppliers—indigenous, Black and other diverse suppliers—wishing to do business with the federal government?

Mr. Alexander Jeglic: Absolutely.

One of the main issues, as was touched on in an earlier question, is that predominantly large and sophisticated suppliers are well aware of government procurement and how it works. However, as you can imagine, diverse suppliers aren't currently part of that supply chain in a meaningful way, so they're not even entering the supply chain as subcontractors at the levels that they should.

One of the issues that we see more than anything is the lack of overall data. We don't know how many diverse suppliers are actively winning federal contracts, so it's very difficult to come up with an answer to the question you've asked without better understanding baseline data.

Mr. Gord Johns: Can you speak a bit about how adequate the government's data collection practices have been in that regard? Has your office contributed to data collection about diverse suppliers?

Mr. Alexander Jeglic: That's a fair question.

Specifically to our office, along with the questions where we put to deputy heads a request to put language about our services in contracts, solicitations and regret letters, we also conducted a survey about what types of activities those departments are doing specifically related to diverse suppliers. Again, that survey was conducted almost two years ago. The results were not overwhelming, but what we have seen is a renewed focus in this area. As you heard in my opening remarks, we've done four diversity summits, and each year we're seeing more progress being made.

This year, Public Services and Procurement Canada announced that there is a departmental focused social procurement policy, so that will actually enable data collection in a much more meaningful way. Before that, there wasn't really that requisite level of policy coverage to collect the data, and that now exists. We are hopeful that this tool itself will improve the data.

It is something that I mention with regularity and it impacts all decision-making associated with how to improve systemic barriers for diverse suppliers.

Mr. Gord Johns: At the previous committee, back in June before the election, there were two witnesses representing indigenous businesses and they had been unsuccessful. They found that the government did very little to prepare them in terms of awarding their contracts.

Can you speak a little bit about what the government needs to do to develop additional processes to provide the necessary feedback so that unsuccessful bidders are able to improve their applications or proposals moving forward?

Mr. Alexander Jeglic: Absolutely. You've touched on another issue that we highlight with frequency, and that is the information that's shared in regret letters and the volume and the quality of information that's provided in debriefs. That's for active bidders who were unsuccessful in processes.

It's a matter of transparency and respect, so if that information is not shared with bidders—as you can imagine, these are oftentimes small and medium-sized businesses that expend resources, time and energy to bid on these proposals—then to ultimately be given a regret letter of one or two lines leaves people very unsatisfied and likely unwilling to participate.

It is an area where I think there is a renewed focus, as I mentioned. You heard me say that the Treasury Board contracting policy is migrating into the directive on procurement management. That directive is more explicit about the mandatory requirement for debriefs, so we are hopeful that there will be more debriefs.

Again, it speaks to the quality of those debriefs, so it is something that my office continues to say out loud to make sure that there are improvements.

Mr. Gord Johns: I'm going to ask you about single bidders. It was identified in your report that 53% of competitive solicitation processes resulted in a single bidder.

Can you explain the large number of single bidders in solicitation processes that are intended to be competitive, and maybe how long this phenomenon of single bidders in competitive processes has been the norm? How could government contracting be better simplified to increase competition?

• (1645)

Mr. Alexander Jeglic: Absolutely. I will caution that it is a relatively small sample size to date. It was a trend that was noticed as we started the first few systemic reviews, and it's something we continue to track.

As I mentioned in a previous response, I can't definitively say exactly why it's happening, but there are two conclusions that our office reached without doing further analysis.

We've found that where there is an incumbent.... For example, in a services contract, there may be an existing supplier offering those services already, and other suppliers are made aware of the fact that there is an incumbent supplier. Typically they choose not to participate because of an assumption that the incumbent has the advantage.

Another rationale as to why there might not be additional bidders in competitive processes has to do with simplification. The process, as you have well noted, is quite complex and burdensome, so there are many efforts being made to help simplify it, but those efforts will never end. To be honest, it's one of those situations where you can look back two decades, and we were talking about simplification 15 or 20 years ago.

Again, concrete steps are being taken, with e-procurement being an example where low-dollar-value procurements will now be automated to make the process more user-friendly. It's anticipated that it will produce some simplification to the process.

Again, as I said, I can't underscore enough the importance of the need to continue to focus on the simplification of federal procurement.

The Chair: Thank you very much. I appreciate your responses.

Just so the committee knows, we are definitely having an issue with interpretation. The way we're set up here is just not conducive to it.

We are about to start the second round, which will basically be about 25 minutes, and then I would ask Mr. Jeglic if he would be okay to come back at a later time for further questioning, should the committee wish to do that at some point in time. I would appreciate

that. I think it's only fair to our interpreters so that they are not stressed to the maximum here.

I'm just looking around the room to make sure that we're okay with that. I'm seeing nods, so thank you.

We'll go into the second and final round, and we will start with Mr. McCauley for 10 minutes.

Sorry, it's five minutes.

Mr. Kelly McCauley (Edmonton West, CPC): Thanks, Mr. Chair.

Mr. Jeglic and Mr. Rabinovitch, welcome back. I appreciate everything that the two of you and your team have done over the years. I know you've been with us several times, and I have to say, of all the government departments we've dealt with, your team has certainly been, head and shoulders, the most dedicated to trying to improve our procurement process and other processes, so thanks very much.

I want to start going through your annual report and just pick out a couple of items and ask you to comment on them.

On the first page, it talks about the emergency spending, with the comment, "does not provide justification to set aside the duties of fairness and transparency that exist in non-emergency situations." Has that become more of an issue? The reason I ask is that I spoke recently in the House about the government ignoring Treasury Board rules, and the comment came back that sometimes, with the volume of spending that we have, it's okay to ignore some rules.

Are you seeing an increase in departments trying to justify not following rules or the transparency, or using COVID or the volume as a justification, or is this just a warning for the future?

Mr. Alexander Jeglic: It's not something that we've studied specifically. It was something that we noted as a result of our study on emergency procurement. As we've seen, other jurisdictions behave in emergencies.... Obviously COVID is a unique circumstance, as I'm sure everyone can appreciate. Ultimately, it is important to still maintain certain rules, and what those rules are, because you're still asking suppliers to behave in these exceptional circumstances in accordance with the principles that you lay out. It's important that those principles be transparent so that they can participate in the process in a meaningful way.

Mr. Kelly McCauley: Thank you.

You talk about simplification a lot, which I appreciate. In 2018, this committee put forward a report asking for simplification. It was a unanimous report, and I don't think we've seen much progress or as much progress as our small businesses need.

What kind of feedback are you getting from the bureaucracy when you're putting forward your suggestions? Are you getting push-back? Are your ideas being accepted? Where does the responsibility lie in getting this stuff done?

• (1650)

Mr. Alexander Jeglic: I think they're both fair and good questions.

In terms of responsiveness from the department, the department is certainly well aware—when I say “department”, I mean Public Services and Procurement Canada—of the need to simplify. You heard me mention e-procurement. There are other initiatives under way that are designed to simplify the terms and conditions of contracts, reduce legalese, and make sure reference points outside of existing contracts by SACC clauses are embedded within contracts. There are several initiatives by the department. They are receptive to our feedback.

In terms of the speed of change—

Mr. Kelly McCauley: Do you believe there's the political will to make this happen? What needs to happen to get this done? We've been talking about it for years. I know you've been pushing for it for years. I read it in your reports, and when Mr. Rabinovitch was doing it, it was very clear.

What are we missing that we cannot get this basic issue tackled for Canadians and small businesses?

Mr. Alexander Jeglic: Right. I think there is another opportunity in time. We've transitioned out of the Treasury Board contracting policy, so I think there is a moment in time when there can be significant change. I'm quite anxiously waiting to see what that new universe looks like.

I mentioned e-procurement. That could potentially be a game-changer. Again, I'm not here to offer a positive or negative opinion of it. It is just something that possibly could make the system much more simple and straightforward.

Mr. Kelly McCauley: On page 4, you talk about how your office “has also watched with interest the level of transparency surrounding emergency procurement, and plans to continue to monitor this issue.” You say that “if issues persist”, this is an area that might require a review.

What issues are you referring to specifically when you say “if issues persist”?

Mr. Alexander Jeglic: What we were looking for was transparent disclosure of contracts associated with COVID procurement. Like everyone else, we were looking to find disclosures associated with contract values, names of suppliers, etc., and we weren't coming up with much information.

As a result, we were trying to identify when that information might become available. We did launch, as I mentioned, a KDS piece on emergency procurement, and we subsequently launched one on the national security exception. As I'm sure you are well aware, both of those invocations then have implications on transparency.

It's not to say that we feel like our job is done by launching knowledge-deepening and sharing pieces. It's an issue that we continue to track through environmental scanning, and if need be, we can and likely will include it as part of one of our systemic reviews.

Mr. Kelly McCauley: I think my 10 minutes are up.

The Chair: I was going to say that 10 minutes goes by very fast.

Thank you, Mr. Jeglic.

We'll now go to Mr. Bains for five minutes.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair.

Thank you to Mr. Jeglic and all the witnesses who are here today.

I'm going to focus a little bit on efficient and effective procurement. Efficient and effective procurement is dependent on the quality and diversity of proposals submitted. In the 2018 report “Procurement practice review: Review of bid solicitation processes”, item five indicates that communication with bidders has been a problem.

In your experience reviewing procurement processes, how long was this a problem prior to the 2018 report?

Mr. Alexander Jeglic: If you look at the top-10 list of issues that we publish on a yearly basis, you'll see that communication.... It comes in two forms. One is during a live solicitation process. There's the question and answer period where suppliers have the right to ask questions of the contracting authority and get answers so they can prepare a response of bids. At times, the answers they receive are either not responsive or not timely, and that has an impact on their ability to provide a response of bids.

The second aspect of communication is also something that we see in terms of regret letters and debriefs. The quality of information varies greatly. Some departments do an excellent job providing debriefs that are really fulsome and give suppliers a real opportunity to improve bids in subsequent processes. But there are other circumstances where departments may not provide such detailed information and therefore leave suppliers relatively unsatisfied with their involvement in the process.

● (1655)

The Chair: Mr. Bains, I apologize. Your five minutes are not up; however, we are having some major interpretation problems with our interpreters. I feel I'm going to have to cancel the meeting here today out of fairness to our interpreters.

We can hopefully get the witnesses back at another time. Also, I would suggest, committee members, that you all put your questions in writing and submit them to the clerk. We can then submit those to Mr. Jeglic. He can share them with his witnesses to see if we can get written answers that we would then share with you. The clerk, the analysts and I will work at another way to hopefully get the ombudsman back.

With that said, I would like to thank Mr. Jeglic and Mr. Rabinovitch, who were the two who actually spoke, but also the other eight who are here participating. I'm not going to go through all your names, because I'm certain I'll mess them up, but I look forward to your responses to the written questions.

To our interpreters, thank you very much for bearing with us in this situation. Unfortunately, we had to go to cellphones, and it just didn't work out the way we would like it to. To the technicians,

thank you for being here, as well as to the clerk and the analysts for staying with us.

With that said, I call the meeting adjourned.

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