

**Toronto Computer Leasing Inquiry
Research Paper**

PROCUREMENT

Volume 1: Common Risk Areas

December 2003

Table of Contents

Executive Summary	iii
Part 1: Introduction	1
• Scope	1
• Research Approach	7
• Key Differences	8
• Terminology	10
Part 2: Discussion of Risks	14
• Values-Based Procurement	14
• Specifications	21
• Readiness	29
• Pre-RFP Consultation	36
• Single Point of Contact	41
• Vender Debriefing & Complaints Handling	45
• Role of Elected Officials	55
• Training & Development	62
• Evaluation	67
• Clear Roles & Responsibilities	75
• Efficiency & Effectiveness/Value for Money	80
• Fairness Commissioners	88
• Best and Final Offer	94

Part 3: Conclusion	99
<i>Appendix A: PMAC Procurement Code of Ethics</i>	101
<i>Appendix B: Examples of Single Point of Contact Policies</i>	104
<i>Appendix C: PPI Fairness Commission Role Description</i>	109

Executive Summary

Part 1: Introduction

This is the first of a two-volume research report for the Toronto Computer Leasing Inquiry examining procurement issues.

Procurement is a complex and highly developed area of professional expertise that spans the public and private sectors. It has been the subject of extensive on-going professional/academic review and critical evaluation that has resulted in a very well developed body of professional knowledge. The reality is that each of the various subject areas within this body of knowledge could be an extensive study in itself.

Focus on the Public Sector

In order to narrow the focus of study to a relevant and manageable subset of issues, the decision was made to focus in this report on public sector procurement. There are well-documented differences between public and private sector procurement that would support this decision. First among these is the fact that process considerations that are paramount in the public sector related to openness, fairness, and equity are offset by business/commercial considerations in the private sector.

Most of the public sector's activities include a strong emphasis on "levelling the playing" field between competitors through competitive procurement processes as part of ensuring fairness and equity in an environment of transparency and public scrutiny. At the same time, public officials are typically under tremendous pressure to lower the cost of government and to demonstrate high levels of value

for money. The result is an inherent tension within public sector purchasing that is often very difficult to manage.

Focus on Risk

Volume 1 reviews the most common and most significant risks that public sector jurisdictions face with respect to procurement, including the following:

- Values-Based Procurement
- Readiness
- Specifications
- Pre-RFP Consultation
- Vender Debriefing & Complaints Handling
- Single Point of Contact
- Role of Elected Officials
- Training & Development
- Evaluation
- Clear Roles & Responsibilities
- Efficiency & Effectiveness/Value for Money
- Fairness Commissioners
- Best and Final Offer

With the stage set by *Volume 1*, *Volume 2* will focus on a discussion of current procurement policies and practices at the City of Toronto, including current issues and challenges, as well as recommendations for potential changes.

Research Approach

The preparation of Volumes 1 and 2 included reviews of over 2,000 pages of documents and a series of interviews with more than 20 individuals including current and former municipal officials, provincial government officials, academics, private sector officials, and other experts. Documentary resources from a wide range of jurisdictions included:

- Statutes and by-laws.
- Government policies, directives, and guidelines.

- Procurement handbooks and other interpretive material.
- Academic and other expert reports, articles, or commentaries.

Part 2: Discussion of Risks

1. Values-Based Procurement

Leading jurisdictions recognize that it is neither possible nor desirable to prescribe the appropriate course of action for staff in every given situation. This not only stifles creativity but also limits the flexibility necessary to make appropriate decisions in different situations. In light of this, the importance of values is strongly emphasized in the literature and educational offerings of the procurement community.

According to procurement organizations, ethics training for procurement staff has been successful in assisting staff to deal with ethical dilemmas. The Canadian federal Treasury Board and Public Works and Government Services Canada suggest that:

“In the procurement world, staff are continually confronted with decisions that require careful attention and that may pose ethical dilemmas. Procurement officers are honest brokers navigating the sometimes competing interests of client departments looking for a service and contractors with an obligation to make money.”

2. Specifications

The development of specifications is consistently identified as a potential high-risk area for procurement in two respects:

- *Value-for-money*: the ability of organizations to understand their own purchasing requirements and to clearly articulate these for vendors.
- *Fairness and equity in the process*: ensuring that specifications do not present a risk to fair and open competition.

As reported by experts, there are a number of other common problems or risks associated with specification development, including that:

- Requirements can be too complex or too numerous.
- Specifications can be too prescriptive and not leave sufficient room for creativity.
- Requirements may not be sufficiently detailed.

Not surprisingly, specification development is a significant and well-defined aspect of training and certification for procurement professionals. Within organizations, this often translates into standardized expectations, definitions, templates, and other tools as important parts of the quality assurance process.

Other examples of recognized best practices in this area include:

- The development of extensive handbooks or other instructive materials and the use of procurement libraries.
- Collecting as much information as possible from the buying department.
- Collecting product information from the industry.
- Looking for standards and other information from professional societies.
- Calling on other “experts” in the purchasing community for help.

3. Readiness

In interviews, experts indicated that lack of readiness is a continuing problem area, particularly but not necessarily limited to larger, more complex procurements. As reported, the failure of large public sector projects can usually be attributed to one or more readiness factors. The reasons for lack of readiness are relatively common and easily understood:

- The time and resources required to do a thorough analysis and workup of the project have been underestimated or are not available.
- In some cases, an announcement has already been made at the political level and public officials are playing “catch-up”.
- The expertise may not exist internally to conduct a thorough assessment.
- The procurement process does not include a formal *risk assessment*.

The remedies as reported in the literature and by experts include:

- Not underestimating the time and resources involved in properly researching and scoping a major, complex procurement.
- Establishing a standing expectation that readiness assessment and reporting on readiness will be a standard part of the procurement planning.
- Incorporating a risk management component into the process that brings greater rigour to the identification of risks and mitigating strategies.
- Maximizing opportunities for structured dialogue with the private sector in the pre-release period as an additional way of identifying potential issues, shortcomings, risks, etc.
- Establishing a standing best practice of *reverse calendar planning* for procurement projects.
- The use of standardized checklists and templates.

In reviewing policies and procedures from different organizations, it was evident that many organizations have well-developed and formal risk assessment/risk management methodologies that are expected to be used throughout a procurement project, particularly for larger and more complex projects.

4. Pre-Request Consultation with the Private Sector

The literature and input from experts strongly emphasizes the importance of significant and substantive upfront consultation with the private sector before a request document is released as a major element in reducing risk and exposure, particularly for larger and more complex projects.

Most public sector organizations accept the need for some degree of contact and exchange of information. In some jurisdictions, this is found in more formal policies and best practice statements related to supply market analysis. In other jurisdictions, there is no formal expectation and each department makes its own determination, often in consultation with the central purchasing authority.

Although consultation is recognized as being essential, it is also important to make a clear distinction between:

- Contact for the purposes of gathering information, researching solutions, and understanding more about what might be available in the marketplace.
- More formal and fairness/equity-based processes to legitimately narrow down the selection of vendors that are invited to compete.

Experts suggest that for larger, more complex purchases, significant dialogue with the vendor community should be taking place in the range of three to six

months before a request document is released. The next stages generally involve much more formal and documented processes including Requests for Expressions of Interest, Requests for Information, Requests for Pre-Qualification, and Requests for Comments on the RFP.

5. Single Point of Contact

Poorly managed communication between bidders and government officials can pose a major risk to the integrity of the procurement process. A common best practice is to establish a single government point of contact (typically the official responsible for managing the actual procurement process and, in some cases, an additional technical contact from the line department). The best practice is not one of prohibiting all communication, but rather ensuring that communication is formally managed as part of controlling the integrity of the process.

For very large or potential highly sought after procurements where the competitive process will take place over an extended period, it is frequently advisable to establish the single point of contact approach often well in advance of an actual request document being released. This can be important particularly if there are various formal processes of information exchange taking place in the pre-release period, such as Requests for Information, Requests for Comment on draft request documents, etc.

The principle of a single point of contact as central to the integrity of the procurement process is very clear among professional procurement officials. This is so much the case that many jurisdictions do not have a formal written policy in place requiring this approach – in effect, it is taken as a given in terms of the fundamentals of good procurement and well-embedded in the organization's operating culture.

6. Vendor Debriefing and Complaints Handling

The literature, expert interviews, and best practices from various jurisdictions emphasize the need for clear and transparent policies with respect to both post-award debriefings and formal complaints handling procedures.

Most experts agree that as a best practice, public sector organizations should have a standing expectation and procedure with respect to debriefing unsuccessful bidders once a contract award has been announced. Typically, briefings are voluntary rather than mandatory for vendors. In some jurisdictions, vendor debriefings are mandatory for more complex or potentially controversial projects. The literature and a review practices indicates that debriefings are exclusively administrative in nature and generally not complex in terms of process.

The literature, practices in many other jurisdictions, and expert opinion also emphasizes the importance of clear, transparent policies with respect to reviewing complaints from bidders. Benefits include:

- Fewer lawsuits.
- Useful information with respect to potential policy/process improvements.
- An opportunity to demonstrate the integrity of the process.
- The opportunity to insulate/protect politicians from the perils of becoming directly involved in the procurement process.

Political involvement in the complaints process tends to vary from jurisdiction to jurisdiction. In many Ontario municipalities, for example, this often takes the form of a deputation to Council or a Standing Committee of Council as the first level of response to the complaint.

In other jurisdictions and at other levels of government, elected officials purposely avoid becoming the appeal mechanism for staff decisions on procurement. The latter approach is consistent with the literature, best practices in leading jurisdictions, and expert opinion. These sources generally emphasize that while complaints handling policies should be approved and mandated by elected officials, the public interest is best served by delegating the process to professional administrative staff.

7. Role of Elected Officials

Experts suggest that one of the important benefits of having a highly professionalized procurement function is the ability to insulate and protect politicians from allegations of attempting to influence procurement decisions. In discussing the role of politicians, most experts emphasize the up-front role of elected officials to:

- Approve procurement policies, including identifying which types of projects require their express approval.
- Ensure that a professional purchasing infrastructure exists.
- Pre-approve the organization's purchasing requirements as part of the overall budget process.
- Approve any purchasing needs that exceed authorized budgets before any formal purchasing activity is initiated.

To the extent that problems with political involvement in the procurement process arise, they tend to be either during or at the back-end of the process, e.g. at the contract award stage or in the handling of debriefings and/or complaints. According to some experts, politicians do not always support fair and open competition, particularly when their constituents are involved.

As discussed in the section on *Single Point of Contact*, the best practice approach is to establish the expectation that vendors and their lobbyists/agents will only communicate with the designated procurement official. At more senior levels of government (i.e. provinces, federal government), this prohibition would typically be in place until the contract award announcement has been made. At the municipal level, the practice is not as consistent.

Whether and to what extent an individual municipality will adopt a policy response to the problem depends to a large extent on the culture or personality of individual Councils. In some jurisdictions, direct lobbying of elected officials at all stages during and after the competitive processes is viewed as a legitimate and acceptable part of the process. In other jurisdictions, no policy is in place to prohibit this kind of activity because there is general agreement among elected officials that this is not acceptable behaviour. Still other jurisdictions have established a more formal single point of contact policy that applies to both administrative staff and Councillors. In some cases, a single point of contact policy is in place until an award recommendation is made public. In other cases, the single point of contact prohibition is in place until an award has actually been made and announced.

Experts suggest that in reviewing staff award recommendations, politicians who understand their role and the importance of fairness and equity would tend to focus on quality assurance, i.e. whether the approved process was followed and used appropriately. Where this kind of understanding does not exist, the political level can often become overly and in the view of many experts, inappropriately involved in the details of the award.

8. Training and Development

The importance of having highly training and professional procurement staff is a key component in risk mitigation. Fortunately, professional development in procurement is a highly developed, recognized, and well-established aspect of the profession. This is reflected in the emphasis it receives in the professional literature and the range and depth of training and development opportunities for procurement officials. Training offerings include in-house courses run by central purchasing authorities and through the education programs of state, provincial, and national professional purchasing associations.

Experts and leading jurisdictions stress that the foundation of training and development for procurement rest on core principles. The thinking in this regard is that an understanding of rules, processes, techniques, analytical frameworks and tools, checklists, etc. is only a component of the best practice approach. In leading jurisdictions, the commitment to training and professional development of the procurement function is clearly articulated including the extensive use of formal and self-managed training instruments in addition to traditional policies and procedures manuals.

9. Evaluation

The evaluation process is considered by experts to be a potential risk area in terms of ensuring that evaluators have sufficient capacity with regard to training, skill, and experience and that the evaluation process is conducted with due regard to the integrity of the process and value-for-money considerations.

The most commonly reported problems with respect to evaluation include:

- Evaluation criteria are flawed, ambiguous, or subject to change midstream during the process.
- The evaluation criteria are not followed or applied properly, most often through a lack of experience or knowledge.

Leading jurisdictions provide extensive training and other supports such as guidebooks, checklists, best practice information, analytical tools, etc. to assist procurement professionals. In terms of subject matter, evaluation is typically a major area of focus within both the formal curriculum and ongoing supports.

With respect to evaluation criteria, the most important piece of advice from experts and the literature alike is that these criteria should be firmly established before the evaluation process begins. The integrity of the process is frequently placed at risk if criteria are left out or added during the actual evaluation.

10. Clear Roles and Responsibilities

Experts and practitioners agree that a lack of internal clarity with respect to the relative roles and responsibilities of different players in the procurement process poses a high risk for both the integrity of the process and the likelihood of a value-for-money outcome. This includes roles and responsibilities for the central purchasing authority, the buying department, legal counsel, finance/budget staff, etc.

The best practice in this area is relatively straightforward – to identify and describe these roles and responsibilities in clear and unambiguous terms as part of the overall purchasing policy and to embed these descriptions in training, guidelines, handbooks, checklists, to ensure a clear and consistent

understanding across the organization. There are very many examples of roles and responsibilities descriptions from other jurisdictions that can be used as source documents.

11. Efficiency and Effectiveness/Value for Money

Within the procurement community there is an ongoing debate with respect to the appropriate balance between centralized and decentralized management of the procurement function. Most jurisdictions reviewed for this study recognize that it is neither efficient nor effective to make all purchases centrally and that the key is achieving the right balance. The typical standard in place involves a centralized purchasing authority as well as a certain amount of delegation to line departments. The central purchasing authority's responsibilities typically include:

- Organization-wide purchasing policies, standards, training and certification requirements, etc.
- Responsibility for establishing standing agreements, vendor of record arrangements, blanket contracts, procurement cards, etc.
- Managing the procurement of goods and services over an established dollar value threshold.
- Monitoring compliance across the organization and reporting on performance to senior management.
- Continually analyzing the organization's business requirements and identifying opportunities for additional savings, more strategic approaches, etc.

In addition to working with the central purchasing authority on centrally managed purchasing opportunities, trained/certified staff in line departments usually have

responsibility for making purchases of particular types and below specific thresholds in-department.

In this division of responsibilities, one of the key considerations is value-for-money. This includes the need to match the complexity of the procurement process with the value and complexity of the contract. The essential theme is that “no single purchasing method suits all situations”. The standard practice across municipalities and other levels of government appears to be to use the three-quote process up to a specified threshold – typically ranging from \$20,000 to \$50,000 depending on the jurisdiction for most goods or services.

12. Fairness Commissioners

From the literature, practices in other jurisdictions, and expert interviews, it is apparent that the use of fairness commissioners is an important emerging risk mitigation tool aimed at strengthening both the reality and perception of integrity in public procurement. A fairness commissioner is an individual who monitors the procurement process with a view to:

- Providing the purchasing organization with assurance that procurement management practices and processes are of the highest standards.
- Communicating/demonstrating to external and internal observers that fairness, objectivity, impartiality, clarity, openness & transparency has been maintained.

The commissioner can be an internal person (e.g. from the central purchasing authority) for small to mid-size projects, often at the invitation of the line department, particularly where there is some foreknowledge or anticipation of a higher than normal degree of external scrutiny. For larger, more complex projects, it is much more likely to be an external expert.

Experts in both the public and private sectors suggest that having a fairness commissioner results in a higher level of confidence among prospective bidders that the process will be managed fairly. There is also evidence to suggest that the private sector is less likely to challenge a particular procurement if a fairness commissioner has been involved.

The greater prevalence of and interest in fairness commissioners is generally viewed as arising from procurement processes and procurements becoming more complex in response to changing external and internal requirements. According to experts, this approach is often adopted in response to political concerns (frequently raised initially by unsuccessful vendors) with respect to the perceived fairness of the process.

In terms of best practices, the fairness commissioner should not be seen as an advisor only to the officials responsible for the procurement. It was emphasized by experts that this individual should have an independent oversight role and capacity to ensure that disagreements with the officials managing the procurement on the government side are brought to the attention of and resolved by appropriate senior management. In addition, fairness commissioners are often engaged much earlier on in the process, particularly with respect to large and complex undertakings. This would generally be after the business case has been developed and approved but before the procurement methodology has been finalized and more formal pre-release discussions with the private sector have commenced.

13. Best and Final Offer

As indicated in the literature and by experts, request documents are rarely perfect. Examples of issues include where:

- Request documents are too rigid to allow for creativity or innovation.
- Ambiguous specifications provide too much latitude for vendor responses.
- Specifications did not take into account the range of available products or services that might be available.
- The purchasing organization underestimated the cost and complexity of the undertaking, or over-scheduled part of the implementation, etc.
- All bids were considered too high or not competitive, or exceeded project funding or that technical compliance could be improved.

Much of the discussion of technique in procurement is focused on tools that are intended to minimize these kinds of problems. From the research, expert opinion, and practice in other jurisdictions, the Best and Final Offer (BAFO) methodology emerges as a best practice designed to mitigate the risk associated with traditional *one-shot* processes.

BAFO is essentially a two-stage procurement process, with the focus in the second stage of either the top evaluated bidder or a short list of the top bidders. It provides an opportunity for short-listed suppliers to improve the quality of their proposals in specific identified areas, particularly but not limited to cost. Under BAFO, the top-rated bidder or bidders are asked for revised proposals in the specified areas, which then become their best and final offer and the basis for additional evaluation and final selection. Any information received in response to the first request document is not disclosed to other bidders as part of the BAFO process.

BAFO is used extensively in the United States at all levels of government for large and small/simple and complex procurements. Most U.S. jurisdictions view it as very useful vehicle for ensuring the best possible technical solutions at the lowest prices and for avoiding unnecessary competition cancellations. Experts interviewed for this project were not aware of any Canadian jurisdictions that have adopted this option.

Part 3: Conclusion

The purpose of this paper has been to provide an overview of the most common risk issues associated with public sector procurement as reported in the literature, the experience and practice of selected jurisdictions, and in the opinion of experts.

The results of this review point to a relatively well-defined set of risks that are commonly recognized in the literature, by experts, and in the policies and practices of various jurisdictions. These risks are generally the same across jurisdictions regardless of size, level (municipal, provincial/state, and federal), or country – Canada, the U.S., the U.K., Australia, etc.

The key themes that would distinguish a best practice or leading jurisdiction are not particularly complex. In many respects, they mirror the more generic aspects of excellence in public sector management, including:

- A strong commitment to ethics, integrity, and professionalism in public service.
- A careful approach to identifying and managing risks.
- A strong commitment to training and development.
- Clearly articulated policies and procedures with an emphasis on practical, useful guidance to staff.
- Clearly articulated roles and responsibilities between and among administrative officials as well as between administrative and elected officials.
- Trust and confidence by elected officials in the professional capacity of administrative staff, backed up by robust and appropriate accountability mechanisms and a well managed administrative-political interface.

Most importantly – and again, consistent with the essential components of excellence in public sector management – is the recognition that maximizing risk mitigation in procurement requires a significant degree of investment of financial resources and senior management time and attention. This includes investment in training people, in taking the time to develop comprehensive policy guidance materials for staff, in researching and remaining current on best practices, and in communicating to the public and vendor community.

Part 1

Introduction

Scope

This is the first of a two-volume research report for the Toronto Computer Leasing Inquiry examining procurement and related issues.

This introduction begins with a discussion of the scope of *Volume 1*. As will be discussed in other sections, procurement is a complex and highly developed area of professional expertise that spans the public and private sectors. It has been the subject of extensive on-going professional and academic review and critical evaluation resulting in a very extensive and well-developed body of professional knowledge found in literally hundreds of:

- Public and private sector organizations with mature procurement functions.
- Municipal, state, provincial, federal, national, and international professional procurement/purchasing associations that focus on standards and methodology development, training, certification, and best practices.
- Academic and research organizations.
- International development and trade organizations.
- Private consulting organizations that focus on excellence in public and private sector procurement.

Within the spectrum of procurement related studies, there is a range of major subject areas, including, to name but a few:

- The actual process of making a purchase, including methodologies, techniques, and best practices related to preparing bid request documents, developing specifications, evaluating bids, selecting vendors, etc.
- The very complex world of supply chain management and supplier relationships, including sourcing strategies, designing and developing supply chain processes and information infrastructures, etc.
- Procurement/purchasing law and international trade agreements.
- Project and contract lifecycle management.
- Cost and value analysis.
- Risk analysis and risk management in the procurement process.
- Electronic commerce and the emerging area of e-procurement policies, practices, and economic benefits.
- The increasingly common view of purchasing as a major strategic element in business management, including strategic sourcing and outsourcing.
- How organizations are structured to deliver effective procurement related services.
- The development of overarching, multi-year procurement strategic plans.

The study of procurement is further segmented on a sectoral basis. At a broad level, this includes the public and private sector. Within these, however, there are significant sub-categories such as:

- Commodity purchasing.
- Defence purchasing.
- Construction.
- Materials management.
- Health care.
- Leasing.
- Manufacturing supply.
- Real estate.

Within the public sector, very large public sector organizations such as the U.S. federal government as a whole or the U.S. Department of Defence are often themselves considered their own legitimate areas of study.

The reality is that each of these areas could be the basis for an extensive review, including individual subsets of the literature, professional designations, certifications, critical evaluations, best practices, discussion of strengths and weaknesses, emerging issues, inherent controversies, etc.

The initial challenge for this report, therefore, has been to narrow the focus to a relevant and manageable subset of issues.

Public Sector Emphasis

The first decision was to focus on public sector procurement. This is not to say that there are not lessons in terms of strategies, techniques, practices, etc. from procurement in the private sector that would be applicable to the public sector. In fact, the research suggests that at the technical level, the basic elements are generally consistent.

Part of the rationale for focusing on the public sector is found in the limitations of time and physical format for this study. By definition, a review of procurement writ large would be, at best, extremely high-level in its orientation and of less utility as part of this series of background reports for the Toronto Computer Leasing Inquiry. However, there are well-documented essential differences

between private and private sector procurement that would suggest a public sector focus as the most appropriate focus.

The first of these is the reality that private sector procurement, while equally (but perhaps differently) complex relative to the public sector, has a different fundamental orientation. Process considerations that are often paramount in public sector procurement such as openness, fairness, and equity are offset by considerations related to maximizing value for shareholders and achieving strategic business advantage. In addition, supply chain management considerations are much more prominent – the processes whereby companies ensure the timely receipt of inputs to their own business processes. The private sector is often much more aggressive in prescribing the terms under which they will do business – i.e. mandatory internet based processes, being more selective in terms of which companies will be invited to bid, when to do a sole-source purchase, no recourse on final decisions, etc. Finally, the procurement function in the private sector operates in the absence of any legal prescriptions with respect to fairness, equity, and transparency. It is, essentially, a private activity.

In contrast, much of the public sector's activities with respect to procurement are not strictly related to shareholder value or supply chain considerations. The professional literature on public sector procurement indicates a strong emphasis on "levelling the playing" field and ensuring fairness and equity through competitive procurement processes. Furthermore, these processes must necessarily take place in a public environment of transparency and scrutiny.

At the same time as they are required to ensure fairness and equity, however, public officials are typically under tremendous pressure to lower the cost of government and to demonstrate high levels of value for money. The result is an inherent tension that is often very difficult to manage. Intense expectations that the process will be fair and equitable are usually matched by equally intense expectations that the best value/lowest cost will be received. The reality is that

one does not inevitably lead to the other. A high degree of attention in the public sector to the integrity of the process can easily take precedence over more strictly bottom-line considerations. This is particularly the case with respect to larger and more complex procurements, as opposed to relatively straightforward or simple fixed-price goods and services, e.g. clothing, repairs, food, utilities, etc. To make the public servant's fairness/value-for-money challenge even more complicated, governments typically layer on additional "value" expectations for their officials. These can include myriad expectations related to, for example:

- International trade agreements.
- Preferences for local suppliers.
- Preferences for suppliers with strong performance in other policy areas that are important to a particular government, e.g. environment, human rights, equality, fair wages, etc.

Focus on Risk

In terms of further narrowing the scope of this report, a number of options were considered including:

- The different approaches between and among jurisdictions with respect to mandating procurement policies (i.e. legislation and by-laws vs. policies, directives, guidelines, etc.
- The various elements included in procurement policies across different jurisdictions.
- The various ways in which different jurisdictions define the steps in the procurement process.

It was readily apparent, however, that much of this work and analysis has already been completed, often in great detail, by others. One such work that was referenced in the preparation of this study is *The Request for Proposal Handbook*

by British Columbia-based procurement expert Michael Asner. In the course of 484 pages (plus 600 samples on an accompanying CD-ROM), Mr. Asner provides a very detailed comparative approach to policies and practices in place in a number of predominantly North American jurisdictions.

From the review of this literature and discussions with experts, the predominant theme of risk is consistently evident and emphasized across all public sector procurement, including the notion that procurement in the public sector is an inherently risky undertaking. This includes risks in terms of obtaining the best value-for-money but also a unique emphasis in the public sector on risks related to the integrity of the process.

With this in mind, the focus of this report is on the most common and most significant risks that public sector jurisdictions face with respect to procurement, with a particular emphasis on larger and more complex undertakings. From the literature and through interviews with practitioners and other experts, a number of key risks have been identified, including the following:

- Values-Based Procurement.
- Readiness.
- Specifications.
- Pre-release Consultation.
- Vendor Debriefing & Complaints Handling.
- Single Point of Contact.
- Role of Elected Officials.
- Training & Development.
- Evaluation.
- Clear Roles & Responsibilities.
- Efficiency & Effectiveness/Value for Money.

Included in the discussion of each of these is a description of the perceived risk or threat and a description of best practices as suggested by experts and/or in place in various jurisdictions to address the situation.

In addition, a discussion of two emerging best practices that are in effect, tools for mitigating a number of the risks identified above, is also included:

- The use of fairness commissioners as part of the integrity/quality assurance process.
- The use of a Best and Final Offer procurement methodology as part of maximizing value-for-money.

With the stage set by *Volume 1*, this report focuses on a discussion of current procurement policies and practices at the City of Toronto, including current issues and challenges, as well as recommendations for potential changes.

Research Approach

The preparation of Volumes 1 and 2 included reviews of over 2,000 pages of documents and a series of expert interviews. The latter were particularly important in terms of identifying and refining the list of identified major risks and confirming various best practice mitigation strategies. In the course of the research, interviews were conducted with more than 20 individuals including current and former municipal officials, provincial government officials, private sector executives, academics, and other experts.

Documentary resources included:

- Statutes and by-laws.
- Government policies, directives, and guidelines.

- Procurement handbooks, other interpretive material, and examples of best practice tools.
- Academic and other expert reports, articles, or commentaries.

Material was collected on a wide range of jurisdictions including examples from across Canada, the U.S., the United Kingdom, Australia, and New Zealand. Sources for these documents included various departments/branches of municipal, provincial, and state governments, academic institutions, private corporations, foundations and research organizations, and associations representing procurement officials.

Key Differences between Municipal and Other Levels of Government

Although this paper looks at public sector procurement at all levels of government, a number of interviewees spoke to what they viewed as key procurement related differences between the municipal and provincial/federal levels. Some of these differences are more definitive in nature (e.g. mandated transparency requirements) while others are historical or cultural. As part of setting the stage for the discussion of specific risk areas in Part 2 of this report, the following is a summary of the key points:

- As a mandated legal requirement, the municipal sector in Ontario and elsewhere operates under a fundamentally different approach to transparency of decision-making than provincial or federal governments. There is no comparable concept of cabinet or executive confidentiality. Staff analysis/recommendations and debate by elected officials on procurement and most other matters generally take place in a public forum with a degree of transparency and scrutiny that would be unimaginable at other levels of government in Canada.

- Relative to the federal and provincial levels, municipal processes, including procurement, tend to be much more locally oriented. When municipalities make purchases, they most often want to do so locally, with all of the potential suppliers closely scrutinizing the process and the decisions. This includes what is generally viewed (and will be discussed in more detail later on in this report) as more access and interaction between local politicians and vendors than one would find at more senior levels of government. As a result, public servants at the municipal level are more likely to be asked by elected officials to justify individual decisions, often in response to a direct complaint from a vendor.
- The general view among experts is that although many municipalities have excellent purchasing policies and strong professional purchasing capacity in their staff, historically professional procurement function has tended to receive more attention at the provincial/federal level in terms of the maturity of policies and processes, investment of resources, senior management time and attention, and professional development.
- Political intervention in the procurement process at the provincial or federal level is generally seen as less frequent or intensive. This is in part because of the system at those levels of cabinet/ministerial authority for decision-making and public service accountability. This generally results in greater distance between politicians/legislators and administration officials which in turn is reflected in greater delegation to and decision-making independence for administrative staff with respect to procurement processes and decision-making.
- In comparison, the municipal system in Ontario where the administration reports to Council as a whole, results in individual legislators/Councillors having considerably more direct contact and *de facto* (if not necessarily statutory) capacity to become involved in administrative matters. There is also a general sense that federal and provincial politicians may be more

likely than many municipal politicians to see procurement as an area fraught with political dangers and one that is “best left to professionals”.

Terminology

The purpose of this section is to provide a brief overview of key terms that appear in this report. This section is not intended to be a comprehensive glossary of procurement related terms, but rather to provide clarity with respect to language. Consistent with the highly professionalized nature of procurement in the public sector nationally and internationally, the use of these terms across jurisdictions is very consistent.

- ***Bid:*** This refers to a tender, proposal or quotation submitted in response to a solicitation from a contracting authority, i.e. submitted in response to an Invitation to Tender, Request for Proposal, or Request for Quotation from a contracting authority.
- ***Award:*** This refers to notification to a bidder or tenderer of acceptance of a bid or tender that brings a contract into existence.
- ***Central Purchasing Authority:*** This refers to the central department in a government that is responsible for purchasing policy and overseeing the purchasing process across departments. In many cases, it also includes responsibility for directly managing purchases that are made centrally, and for managing purchases over a certain value on behalf of departments.
- ***Buying Department:*** Also referred to as the “line” or “end user” department. This term relates to the department within government that is the actual purchaser and end user of the good or service. In most

jurisdictions, the line departments manage their own procurement according to corporate policies up to a certain dollar value, with the advice and support of the central purchasing authority. Above that threshold, the buying department relies on the central purchasing authority to manage the purchasing process. In almost all jurisdictions, the buying department retains accountability for deciding what to purchase and which bidder to select.

- **Request Document:** This term is used in this report as a *catch-all* for the different types of documents used to solicit bids from outside organizations for the purchase of goods and services. Examples of bid release documents include:
 - **Request for Proposal:** A competitive procurement process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution.
 - **Request for Tender:** Also known as an Invitation to Tender. A competitive procurement process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists. This approach usually involves the lowest-priced responsive bid (the lowest bid that complies with all the mandatory requirements) being awarded the contract.
 - **Request for Quotes:** Generally used to mean the same thing as Request for Tender.
 - **Request for Standing Offer/Vendor of Record:** This term refers to a (usually) centrally established agreement with a vendor or vendors (through a competitive process), typically for goods or

services that are commonly required across departments. The expectation is that departments with requirements for goods or services covered by the agreement will establish contracts with the vendor(s) who have been pre-selected by the central purchasing authority. **Blanket contracts** are a variation on this theme, in this case, a formal purchase agreement up to a maximum contract amount, for a commonly required good or service and against which one or more departments can make purchases.

- **Request for Expressions of Interest:** A general market research tool to determine vendor interest in a proposed procurement. It is used prior to issuing a call for bids or proposals and is not intended to result in the award of a contract.

- **Request for Information:** A general market research tool used to determine what products and services are available, scope out business requirements and/or estimate project costs. A Request for Information is used to provide vendors with a general or preliminary description of a problem or need and to request vendors to provide information or advice about how to better define the problem or need, or alternative solutions. It should not be used to pre-qualify or screen vendors. It is not intended to result in the award of a contract.

- **Request for Pre-Qualification:** A procurement process used to pre-qualify vendors for subsequent participation in an invitational Request for Proposal. Responses from proponents are evaluated against selection criteria set out in the solicitation, and a short-list of pre-qualified proponents is created.

- **Vendors:** This term is used to refer to companies that are potential bidders on contracts. It is used interchangeably with “bidders”.
- **Bid Protest:** A complaint that is made against the methods employed or decisions made by a contracting authority in the administration of a process leading to the award of a contract.
- **Bidders' Conference:** A meeting to discuss with potential bidders, technical, operational and performance specifications, and/or the full extent of financial, security and other contractual obligations related to a bid solicitation.
- **Specification:** A concise statement of requirements to be satisfied for materiel, a product or service, including the identification of test methods or the procedures which will determine whether the requirements have been met.

Part 2

Discussion of Risks

1. Values-Based Procurement

In surveying the literature and research on procurement, it quickly becomes evident that a primary focus of professional attention is on policies, procedures, directives, guidelines, techniques, best practices, etc. However, as also documented in the literature and validated in expert interviews, procurement is about more than the technical components. Almost universally, experts offered the view that ethics-related values and principles are the essential foundation of public sector procurement in leading jurisdictions.

Leading jurisdictions recognize that it is neither possible nor desirable to prescribe the appropriate course of action for staff in every given situation. This not only stifles creativity but also limits the flexibility necessary to make appropriate decisions in different situations. As indicated in the literature on governance, the remedy of too much specificity can be as problematic as not enough.

For the most part, the values underlying procurement practices in jurisdictions that were part of this study were similar and can be reduced to a core of four:

- Fairness and equity.
- Openness.
- Value-for-Money.
- Good Management.

The importance of values in terms of training and ongoing conduct of procurement matters is strongly emphasized in the literature and educational offerings of the procurement community. *Appendix A* includes a *Procurement Code of Ethics* developed by the Purchasing Management Association of Canada (PMAC). The Code deals with values, norms of behaviour, and enforcement practices. The following is the portion of the code that describes the values:

“Members will operate and conduct their decisions and actions based on the following values:

- *Honesty/Integrity: Maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside the organizations in which they are employed;*
- *Professionalism: Fostering the highest standards of professional competence amongst those for whom they are responsible;*
- *Responsible Management: Optimizing the use of resources for which they are responsible so as to provide the maximum benefit to their employers;*
- *Serving the Public Interest: Not using their authority of office for personal benefit, rejecting and denouncing any business practice that is improper;*
- *Conformity to the Laws in Terms of:*
 - *The laws of the country in which they practice;*
 - *The Institute’s or Corporation’s Rules and Regulations*
 - *Contractual obligations.”*

The following examples from various jurisdictions illustrate how values are expressed directly by purchasing organizations:

City of Cambridge, Ontario: Ethical Principles of Procurement

- *We subscribe to the principle that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.*
- *We endeavour to identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.*
- *We believe that members of our staff should at no time or under any circumstances, accept directly or indirectly gifts, gratuities or other things of value from vendors.*
- *Any supplier whose practices are found to contravene these ethical principles will be disqualified from future tenders or purchases.*

Halton Co-operative Purchasing Group (Halton Region, Ontario)

1. *High standard of ethics and integrity for all members.*
2. *Co-operation and participation by all members, working together to achieve the right price, the right source, the right quantity and the right quality, at the right time.*
3. *Support of fair and open market competition, with an impartial approach to award all contracts and tenders.*
4. *Accountability by all members to the H.C.P.G. and to the agencies they represent, for seeking and providing the best value in the most cost effective way.*
5. *An energetic and proactive approach to customer service.*
6. *An innovative and progressive approach to dealing with changing technology, legislation.*

**California Association of Public Purchasing Officers:
Standards of Purchasing Practice**

- *To regard public service as a sacred trust, giving primary consideration to the interests of the public agency that employs us.*
- *To purchase without prejudice, seeking to obtain the maximum value for each dollar expended.*
- *To avoid unfair practices, giving all qualified vendors equal opportunity.*
- *To honor our obligations and require that obligations to our public agency be honored.*
- *To accord vendor representatives courteous treatment, remembering that these representatives are important sources of information and assistance in solving our purchasing needs.*
- *To refuse to accept any form of commercial bribery, and prevent any appearance of so doing.*
- *To be receptive to counsel from our colleagues, and to cooperate with them to promote a spirit of teamwork and unity.*
- *To conduct ourselves with fairness and dignity, and to demand honesty and truth in the purchasing process.*
- *To strive for greater knowledge of purchasing methods and of the materials we purchase.*
- *To cooperate with all organizations and individuals involved in activities designed to enhance the development of the purchasing profession, remembering that our actions reflect on the entire purchasing profession.*

Waterloo Region (Ontario) Purchasing Cooperative
Statement of Ethics for Public Purchasers

"The Staff associated with the purchasing process subscribe to and practise their profession according to the Ontario Public Buyers Association's Code of Ethics, which is based on the following tenets:

1. *Open and Honest Dealings with Everyone Who is Involved in the Purchasing Process*
 - *This includes all businesses with which this agency contracts or from which it purchases goods and services, as well as all members of our staff and of the public who utilize the services of the purchasing department.*
2. *Fair and Impartial Award Recommendations for All Contracts and Tenders*
 - *This means that we do not extend preferential treatment to any vendor, including local companies. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.*
3. *An Irreproachable Standard of Personal Integrity*
 - *Absolutely no gifts or favours are accepted by the staff associated with the purchasing process in return for business or the consideration of business. Also, the staff associated with the purchasing process do not publicly endorse one company in order to give that company an advantage over others.*
4. *Cooperation With Other Public Agencies in Order to Obtain the Best Possible Value for Every Tax Dollar:*
 - *This agency is a member of a cooperative purchasing group. Made up of several public agencies, this group pools its*

expertise and resources in order to practise good value analysis and to purchase goods and services in volume and save tax dollars.

5. *Continuous Development of Purchasing Excellence:*

- *All staff associated with the purchasing process of this agency take advantage of the many opportunities provided by the Ontario Public Buyers Association to further their knowledge of good public purchasing principles and professional excellence.”*

The Canadian federal Treasury Board and Public Works and Government Services Canada (PWGSC – the federal government’s purchasing arm) deal specifically with the ethical demands placed on procurement officials as part of their on-going training related to ethics and modern controllership in the federal government:

“In the procurement world, staff are continually confronted with decisions that require careful attention and that may pose ethical dilemmas. Procurement officers are honest brokers navigating the sometimes competing interests of client departments looking for a service and contractors with an obligation to make money.”

According to these organizations, ethics training for procurement staff has been successful in assisting staff to deal with ethical dilemmas:

“Staff that have undergone ethics training are better equipped to act in an independent and objective way. They are also more likely to consider the impact their decision will have on other parties. The training is taking the struggle out of not knowing the answer to a problem and is encouraging people to make a carefully reasoned decision and then move on. In managing procurement projects, the most complex projects are the ones that have continually shifting objectives so that only the underlying values and principles are stable. The focus of these projects is on governance

based on values. The Ethics Program is a perfect complement to our own complex procurement training which focuses on governance issues."

"Rather than prescribe right or wrong answers, the Program helps people follow a path that leads them to a decision they are comfortable with."

In support of this achievement, these federal departments have identified three important success factors that are consistent with the literature on good management in general but that also apply to good management of the procurement function, in terms of defining and embedding values:

- *"Senior Management Commitment: senior management demonstrating that values and ethics are a priority for the organization. In the federal context, having the Deputy co-chair the ethics committee certainly helps put the importance of the issue into perspective."*
- *Strong Leadership: ethics program leaders have worked diligently not only getting their message out but also listening to the various groups undergoing training and then tailoring courses appropriately.*
- *Calibre of the Courses: course material should be interesting and staff delivering courses dynamic."*

2. Specifications

According to the State of Queensland's (Australia) *Guide to Developing Specifications*,

“In a purchasing context, a specification can be defined as a statement of needs. It defines what the purchaser wants to buy and, consequently, what the supplier is required to provide. Specifications can be simple or complex depending on the need.

The success of the purchasing activity relies on the specification being a true and accurate statement of the buyer's requirements.

Apart from being a means of identifying the goods or services required, a specification will form part of any future contract that might result from offers received.

The specification forms part of an “Invitation to Offer” document. Other elements in the invitation document include the “Conditions of Offer”, the “Conditions of Arrangement/Supply/Contract” and “Form of Offer” and response schedules.”

In the literature and expert interviews, the development of specifications is consistently identified as a potential high-risk area. The State of Idaho's Division of Purchasing suggests that:

“Specifications are one of the most important elements of the purchasing process. The preparation of good specifications is probably the most difficult function in the process. Inadequate or poorly written specifications are the cause of many bidder challenges and can considerably delay the purchasing process.”

The U.K. Department of Trade and Industry identifies the preparation of specifications as “an essential preliminary step in the purchasing cycle.”

Specification development is particularly important in two respects that, again, speak to the dual purposes of public sector procurement:

- The first of these speaks to value-for-money: the ability of the purchasing organization to understand its own purchasing requirements and to clearly articulate these for the vendor community.
- The second speaks to the need for fairness and equity in the process: ensuring that a specification does not present a risk to fair and open competition, i.e. unnecessarily discourages or prevents particular vendors or groups of vendors from competing.

In many jurisdictions, the importance of fairness and equity is emphasized in formal procurement statutes and policies.

- The State of Idaho’s purchasing policy states that: *“Specifications shall, as much as practical, be non-restrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition.”*
- Similarly, the State of Pennsylvania, in its procurement handbook stresses that *“If bidders are misled by what was required by the specifications, the bidding was not on a common basis, and the lowest figures submitted would not, in law, be the lowest bid since it lacked fair competition.”*
- Queensland’s approach specifies that specifications should *“provide equal opportunity for all potential suppliers to offer goods or services which satisfies the needs of the user, including goods or services incorporating alternative solutions.”*

Some interviewees suggested that there is a general (and, in their view, not inaccurate) perception in the private sector that the development of specifications

in the public sector is often to be found lacking. The prevailing sense is that the resulting ambiguity more often plays out in the private as opposed to public interest.

As reported by experts, there are a number of other common problems or risks associated with specification development, including:

- Requirements can actually be too complex or numerous relative to the value of the contract.
- There can be too many mandatory requirements relative to the risks inherent in the project.
- Specifications can be overly prescriptive and not leave sufficient room for vendors to demonstrate creativity or bring additional value to their offerings.
- Requirements may not be sufficiently detailed and as a result, suppliers may have room to describe products or services that do not necessarily meet the purchaser's requirements.

The U.K. Department of Trade and Industry highlights the potential consequences for its staff as follows:

“If the specification is wrong, inadequate or unnecessarily tightly drawn it may result in:

- *A suitable tenderer being precluded from bidding;*
- *Tenderers wrongly or variously interpreting the requirement;*
- *Tenderers failing to submit satisfactory tenders;*
- *Major difficulties in evaluating the bids; or*
- *Wrong or unsuitable goods/services being offered/supplied or services not meeting the perceived requirement.”*

In addition, specification development requires a good knowledge of what exists in the marketplace. This can be particularly challenging for large, complex projects where the required expertise to do so may not reside in government. Many purchasing departments define as part of their role to assist line departments in identifying whether they in fact do have sufficient expertise or whether external expertise should be acquired. This is particularly the case with larger and more complex projects, which tend to place greater emphasis on internal collaborative approaches. This typically involves the buying department working closely with specification writers and purchasing process managers from the central purchasing authority, as well as other internal and/or external technical experts.

Often the role of the purchasing specialist is clearly articulated either in formal policies or in more interpretative guidelines or handbooks. The U.K. Department of Trade and Industry specifies that:

“Wherever feasible, specialist purchasing staff should be brought into the discussions at an early stage of a purchase. They have a responsibility for referring back to the user any doubts that they may have about the specification, description or recommended supplier recorded on the purchase requisition. They are also:

- *Experts (or have ready access to experts) in procurement and contractual law.*
- *Able to advise on the source of specialist specification advice most appropriate and any legal constraints.*
- *Able to provide access to existing specifications.*
- *Familiar with the requirement to decide the method of purchase.*
- *In a position to know whether the requirement is available under existing contracts.*

- *Able to help with the development of an acquisition strategy.*
- *Able to help with market research.*
- *In a position to develop specific contractual clauses to complement the specification.”*

Procurement specialists have the responsibility of challenging specifications where they seem to be restrictive and may prevent best value for money being obtained.”

Not surprisingly, specification development is a significant and well-defined aspect of training and certification for procurement professionals. This is reflected in the educational offerings of virtually all professional procurement associations, including the National Institute of Governmental Purchasing (NIGP), the Purchasing Management Association of Canada (PMAC), the Ontario Public Buyers Association (OPBA) to name a few.

Within organizations, the importance of specifications development often translates into standardized expectations, definitions, templates, and other tools as important parts of the quality assurance process. Again, Pennsylvania’s procurement handbook speaks to the utility of common standards in this area:

“The common standard is necessary in order that the Commonwealth may have the advantage of fair and just competition, thus eliminating as much as possible, any question of favouritism. The purpose of competitive procurement is frustrated where there is no common standard on which bids and proposals are based. The common standard provides the level playing field for those who want to compete for Commonwealth contracts.”

Another common best-practice approach is the development of what are often extensive handbooks or other instructive materials that focus on specification development. In the course of surveying jurisdictions, many examples of

practical guides for the use of procurement staff were identified. Often these guides were in a very user-friendly format and language and were intended to supplement, rather than replace, more formal training requirements or more formal policies, directives, guidelines, etc. that might be place.

The use of procurement libraries is another common best practice. In many organizations, these have been developed and maintained for the use of staff and include examples of actual specifications that have already been used. In some cases, these specification libraries are publicly accessible with a view to sharing examples between and among jurisdictions and with the vendor community.

Best practice organizations often have a standing expectation that staff will access and make use of extensive libraries or repositories of specifications that exist in external organizations. These typically include the various state, provincial, and national purchasing associations. For example, the National Institute of Governmental Purchasing (NIGP) maintains a library of over 10,000 sample specifications. Closer to home, the Ontario Public Buyers Association has an on-line catalogue of more than 2,000 examples.

Other examples of recognized best practices in this area include:

- Collecting as much information as possible from the buying department or end-user as to the function and performance of the requested product and making maximum use of their expertise and knowledge.
- Collecting product information from the industry (brochures, catalogues, specs, etc.), including catalogues and product specifications available on the internet.
- Looking for standards and test information from professional societies where available.
- Calling on other “experts” in the purchasing community for help.

- The use of simple checklists (see the example below from the U.K.'s Department of Trade and Industry).

U.K. Department of Trade and Industry Checklist

- *“Are previous (similar or related) specifications available?”*
- *Are the requirements stated clearly, concisely, logically and unambiguously and contain only the essential features or characteristics of the requirement?*
- *Is the specification presented in performance terms rather than a detailed design?*
- *Do the specifications contain enough information for potential suppliers to design and cost the products or services they will offer?*
- *Are limits, tolerances or performance targets reasonable and easy to check? Are they written in such a way that they define the criteria for acceptance of offered products or services as well as permitting them to be evaluated by examination, trial, test or documentation?*
- *If appropriate, do specifications conform to European, international or national standards and comply with any legal obligations?*
- *Do specifications provide equal opportunity for all potential suppliers to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions?*
- *Ensure that specifications do not contain features that directly or indirectly discriminate in favour of, or against, any supplier, product, process or source.*
- *Ensure that they do not over-specify requirements - i.e. specify performance that is more than "Fit For Purpose".*
- *Have you taken due account of the Department's environmental policies?*

- *Is variety reduction and simplification exercised?*
- *Are site-specific requirements necessary?"*

3. Readiness

In interviews, experts indicated that lack of readiness is a continuing problem area, particularly for large, more complex procurements. Readiness in these terms is seen as including:

- Adequate knowledge of the capacities/products/services available in the marketplace.
- A clear understanding of the organization's business requirements, including organizational, financial, and technical considerations.
- A well-developed and high quality business case, including clarity and due diligence with respect to the anticipated benefits.
- Clear political, senior management, and related stakeholder commitment to the undertaking, including direction and authority to proceed.
- A consistent level of senior management attention.
- Having well-training staff who understand their respective roles and responsibilities.
- A well-developed and carefully planned procurement process.
- A clear framework for accountability related to ongoing contract management once the opportunity has been awarded.

Where one or more of the above elements are not present, the project is subject to a higher degree of risk. As reported in interviews, the failure of large public sector projects can usually be attributed to one or more of these factors.

The factors that can lead to a lack of readiness are commonly understood:

- The time and resources required to do a thorough analysis and workup of the project have been underestimated or are not available.
- In some cases, an announcement has already been made at the political level and public officials are playing “catch-up”.
- The expertise may not exist internally to conduct a thorough assessment.
- The procurement process does not include a formal “risk assessment” component that emphasizes risk identification and management.

The result is often a procurement process that is flawed in terms of the purchasing organization’s ability to articulate its needs and just as importantly to effectively evaluate responses.

The remedies as reported in the literature and by experts include:

- Not underestimating the time and resources involved in properly researching and scoping a major, complex procurement.
- Establishing a standing expectation that readiness assessment and reporting on readiness will be a standard part of the procurement planning methodology within the organization. (see discussion below of the U.K.’s *Gateway Review Process*.)
- Incorporating a risk-management component into the process that brings greater rigour to the process of identifying risk and mitigating strategies.
- Maximizing opportunities for structured dialogue with the private sector in the pre-release period as an additional way of identifying potential issues, shortcomings, risks, etc.
- Establishing a standing best practice of *reverse calendar planning* for procurement projects. This involves, in the initial planning phase of a procurement, a statement of when the project should be finished and then backing up from that point the various steps that will need to occur. With

this in place, a simple risk assessment allows one to determine whether the various milestones are in fact realistic and where elements of the process or key decisions are beyond the control of the project.

- The development and utilization of standardized checklists and templates as part of part of embedding readiness considerations in procurement planning and development.

As an example of the latter, the U.K. Office of Government Commerce provides its senior executives with a relatively simple checklist of key questions that are designed to get add readiness issues and potential shortcoming.

"Does the Department and other key stakeholders understand how this project will affect the business and how much and how little can be changed once it is launched?"

- *Is the basic design for this project fixed, cleared and visible with all key people (including Ministers) – do these people understand that the basic design is now "frozen"?*
- *Do the Departments know what it can change as the project progresses and how much changes will cost in terms of money, performance reduction and timescales?*
- *Explain the Business Case to me so that I understand why each of the components of the project are necessary to achieve our business objectives. Does each component deliver benefit? Are the future users of the technology properly represented on the project, are they sufficiently engaged, knowledgeable and senior to take decisions quickly and authoritatively?*
- *Explain to me how our business processes and environment will change, internally and externally, as a result of the project.*

- *What are the benefits that we have to deliver after the project is handed over?*
- *Do we have a benefit delivery plan? Do we have a transition plan to new systems?"*

"Is the project properly staffed to enable effective leadership, decision-making and risk management to begin from day one and continue consistently to the end?"

- *Who is the senior manager with real understanding of the business requirement and responsible for delivery of the benefits?*
- *Is there someone with a full time commitment and appropriate experience to manage the project?*
- *Who is the very senior individual personally accountable for the delivery of this project - is he or she committed from now until it is completed and signed-off and does he or she have the authority to make key decisions (affecting this Department and others)?*
- *Do I understand the business requirement and the expected results of the project, and am I convinced that they are realistic?*
- *Will there be sufficient experienced project and "user" staff on this project from day one?*
- *What are the top ten risks for this project - have we plans in place to manage these risks and contingency plans to respond if, despite our best efforts, the risk actually happens.*
- *Do the project structures, roles and responsibilities recognise the distinction between the in-house business change project and the contributing supplier led development project, where these are different?*

- *At what points will I be able to tell if the project is failing – and how quickly will I be able (contractually and politically) to implement remedial actions or stop the project if it fails?”*

In reviewing policies and procedures from different organizations, it was evident that many organizations have well-developed, formal assessment methodologies that are expected to be used throughout a procurement project, particularly for larger and more complex projects. According to the Ottawa-based procurement consulting firm Partnering in Procurement, readiness assessments are not just to be performed at the outset of an undertaking, but periodically throughout as part of validating “the organization’s preparedness for the next step or next steps of the project”.

One example of this is the U.K. Office of Government Commerce’s (OGC) *Gateway Process*. This process was part of the government’s response to a review of procurement in the civil central government (Gershon Report). The authors of the review had identified the need for “*a well defined, common process for the strategic management of large, complex or novel procurements.*” A key recommendation was for the development and implementation of a form of readiness assessment that would:

- *“Help to ensure a more consistent and enhanced level of performance on project orientated procurements, thereby saving money and boosting efficiency.*
- *Catalyse widespread use of best practice, as this will increasingly be documented in the definition of the deliverables.*
- *Provide a foundation for procurements which support joined-up Government initiatives.”*

The following is an OGC description of the process that can apply to all procurements in the U.K. civil central government, including services,

construction/property, IT-enabled business transformation projects, and vendor of record/blanket contracts.

“What is a Gateway Review?”

- *In simple terms, it is a review of a procurement project carried out at a key decision point by a team of experienced people, independent of the project team. Procurements are any finite activity designed to deliver a government requirement and involving government expenditure.*
- *The Gateway Process is based on well-proven techniques that lead to more effective delivery of benefits together with more predictable costs and outcomes. The process considers the project at critical points in its development. These critical points are identified as Gateways. There are six Gateways during the lifecycle of a project, four before contract award and two looking at service implementation and confirmation of the operational benefits. The Process emphasises early review for maximum added value.*
- *Gateway 0 may be applied at the startup of a programme or project. It is expected at the start up of a programme and is recommended practice for a major project that is high risk.*
- *A Gateway review is held before key decision points in the lifecycle of a procurement project. The review teams are made up of independent experienced practitioners who bring their prior knowledge and skills to bear to identify the key issues that need to be addressed for the project to succeed. The review criteria are established and published in a set of workbooks available on Office of Government Commerce's website. The work of a Gateway team is for the project senior responsible officer, and ownership of the review report and recommendations lies with the SRO. A Gateway review is carried out over a period of 4-5 days at the most with the review report presented*

and discussed with the SRO before the review team leaves the client premises.”

There is currently no minimum value required for a Gateway process to be applied, although the complexity of the process can be varied depending on levels of risk. Each procurement project is required to submit a profile to a central Gateway team, which in turn meets with the line department to discuss and agree on a risk profile and a determination of the extensiveness/rigour of the process to be applied.

4. Pre-Request Consultation with the Private Sector

The literature, practice in other jurisdictions, and input from experts strongly emphasizes the importance of significant and substantive upfront consultation with the private sector before a request document is released as a major element in reducing risk and exposure, particularly for larger and more complex projects.

According to the State of New Mexico:

“Experience has shown that most of the procurements which are cancelled prior to award suffer from miscommunication or misdirection at the beginning of the procurement. Without a clearly defined objective and direction, the procurement results may differ significantly from management expectations, resources requirements or funding ability.”

The commonly understood goals include ensuring to the extent possible that:

- The purchaser has the best possible understanding of what exists in the marketplace, including capabilities or weaknesses, the range of products, prices, innovations available, etc.
- Vendors understand the government’s requirements and are better prepared to submit qualified responses.
- The purchaser has an opportunity to refine and improve its approach to a particular procurement through feedback and input from the vendor community. This can include business case accuracy, appropriateness of financial models, specifications, a better balance of prescriptiveness and flexibility/opportunities for innovation, etc.

There is some indication from the research that the prevailing private sector view is one of public sector organizations not having a strong, consistent track record in this regard. With respect to municipalities, the perception exists in some parts of the private sector – although not based on a comprehensive sampling – that

this level of government is somewhat less likely to engage vendors in up front discussions compared to the provincial or federal level.

Apart from the size, scope, and complexity of the undertaking, lack of time, resources, or expertise are often factors in determining to what extent this kind of activity is undertaken in the public sector. However, a major determining factor can be issues related to fairness and equity.

As discussed earlier, fairness and equity considerations are not as paramount in private sector procurement processes, where there is typically a much higher comfort level with the early identification of a smaller group of companies that are believed to be capable of meeting the need. Within the public sector, there is an ongoing debate with respect to whether the inherent risks of less formal pre-release consultation can be effectively managed. Often this results in an organization being perceived as having overly prescriptive, rules-based policies.

Most public sector organizations, however, accept the need for some degree of contact and exchange of information. In some jurisdictions, this is found in more formal policies and best practice statements related to supply market analysis. In other jurisdictions, there is no such formal expectation and each department makes its own determination, often in consultation with the central purchasing authority.

In general, however, it is recognized as being essential to make a clear distinction between contact with selected suppliers for the purposes of gathering information, researching solutions, and understanding more about what might be available in the marketplace, as compared to more formal and fairness/equity-based processes to legitimately narrow down the selection of vendors that are invited to compete.

Experts suggest that for larger, more complex purchases, significant dialogue with the vendor community should take place in the range of three to six months before a request document is released. This can include market research and one-on-one discussions.

The next stages generally involve much more formal and documented processes that are, in effect, the initial stages of the formal procurement process. These include various mechanisms as discussed in the earlier section of this report dealing with *Terminology*, including:

- *Requests for Expressions of Interest:* A general market research tool to determine vendor interest in a proposed procurement. It is used prior to issuing a call for bids or proposals and is not intended to result in the award of a contract.
- *Requests for Information:* A general market research tool used to determine what products and services are available, scope out business requirements and/or estimate project costs. A Request for Information is used to provide vendors with a general or preliminary description of a problem or need and to request vendors to provide information or advice about how to better define the problem or need, or alternative solutions. It should not be used to pre-qualify or screen vendors. It is not intended to result in the award of a contract.
- *Requests for Pre-Qualification:* A procurement process used to pre-qualify vendors for subsequent participation in an invitational Request for Proposal. Responses from proponents are evaluated against selection criteria set out in the solicitation, and a short-list of pre-qualified proponents is created.
- *Requests for Comments on the RFP:* A formal, documented process whereby all interested vendors are asked to review and comment on the draft release document. Vendors are often supplied with an initial list of questions as well as asked to make any additional comments. In some

cases – depending on a jurisdiction's comfort in terms of transparency – the input is summarized publicly and forms part of the permanent record of the project.

On the issue of one-on-one discussions well in advance of the release of a request document, some experts feel that these are too risky in terms of potential perceived advantages for one or more vendors and should be avoided. Others argue that:

- They are often essential to the process of refining the government's business requirements.
- They provide an early opportunity for vendors to bring forward better or at least alternative solutions.
- Vendors are rarely forthcoming in more open group settings where their competition is also present.

A central issue in this debate is the reality that, depending on the number of potential suppliers in the marketplace, this process can by necessity mean that not all potential bidders are contacted. Generally, the literature and many experts view this as an acceptable risk given that this is intended to be an initial scoping exercise. The literature and expert opinion supports the view that perceptions of an advantage having been conferred on one or more vendors can be offset through fairness, equity, and openness in subsequent more formal processes, including:

- Providing subsequent more formal consultative opportunities for all prospective bidders to provide information on their products and services through a Request for Information.
- Providing potential bidders with an equal opportunity to review and comment on a draft version of the request document.

- Ensuring that the formal bid process is open, fair, and equitable, including any formal steps taken to legitimately narrow the field of potential bidders such as a Request for Qualifications.

It was suggested by one interviewee that a relatively simple benchmark of how effective the pre-consultation can be found in the number of addendums that are sent out as part of the competitive process. According to this view, bid documents that have been the subject of more rather than less consultation in the pre-release period, would have fewer addendums.

The literature and discussion with experts emphasizes the process of requesting input on the draft request document stage as being particularly important. The general consensus is that while post-release bidders conferences are standing operating procedure in most jurisdictions, particularly for contracts over a certain size/complexity, they are not very effective in terms of meaningful dialogue and input primarily for reasons of exposure, i.e.:

- At that stage, all of the competitors are in the room.
- There is usually strong reluctance to ask key questions at that stage for fear of giving away a competitive advantage.

Most importantly, in terms of getting the request document “right”, the bidders’ conference is seen as simply being too late. Even if vendors did feel comfortable being more open in such a public setting, there is no opportunity at that stage to make any material changes to the business case, specifications, evaluation weighting, etc. without exposing the process to a challenge from unsuccessful bidders. Even the more extreme step of cancelling the competition and issuing a new request document with the appropriate changes could be subject to challenge.

5. Single Point of Contact

Most experts agree that poorly managed communication between bidders and government officials can pose a major risk to the integrity of the procurement process at all levels of government in terms of demonstrating fairness, equity, and transparency.

According to experts and the professional literature on procurement, a common best practice is to establish a single point of government contact (typically the official responsible for managing the actual procurement process) and require that all vendor communication with government officials be made through that single point of contact.

In some jurisdictions, this is known as a *black-out* period or in a number of cases, a *cone of silence*. During a number of interviews, however, it became evident that the term *black-out* can be confusing or misleading for some. Some have expressed concern that this might mean a prohibition on all contact between bidders and the contracting organization. They correctly point out that this would be impractical in terms of being able to respond to legitimate inquiries on the part of vendors. The best practice, however, is not one of prohibiting all communication, but rather of ensuring that communication is formally managed as part of controlling the integrity of the process.

By way of example, the Ontario Government is fairly typical in this regard. Request documents are usually quite specific that from the time a release document is issued until a contract award has been made there can be no contact by bidders or their agents/lobbyists with any government officials (including specific reference to Ministers and Minister's staff) other than the designated contact person.

This approach to managed communications is often extended in the case of very large or potential highly sought after procurements that will take place over an extended period. Experts suggest that it is frequently advisable to establish the single point of contact approach often well in advance of an actual request document being released, particularly if there are various formal processes of information exchange planned or taking in the pre-release period, such as Request for Information, Requests for Comment on a draft request document, etc.

As reported in the literature and interviews, the principle of a single point of contact as central to the integrity of the procurement process is typically very clear among professional procurement officials. This is so much the case that many jurisdictions do not have a formal written policy in place requiring this approach – in effect, it is taken as a given in terms of the fundamentals of good procurement and well-embedded in the organization's operating culture.

The bid document should make clear how and when inquiries would be welcomed. Some jurisdictions allow questions to be asked up until bids are submitted. Others set a time limit, usually a few days before bids closes. The second approach is generally seen as a good idea because the best practice is that questions and answers are recorded and distributed to all of those who have requested a copy of the bid request document. Allowing questions to be received up until the last minute might mean that not all participants would have access to the information before their bid has to be submitted and as such, the process could be placed at risk. For complex projects or particularly competitive environments, the process is usually quite rigorous in terms of documenting and distributing questions and answers to all bidders.

With smaller contracts, it is generally seen as appropriate for the question and answer process to be managed on a somewhat less formal basis. This is consistent with the need to balance value for money with fairness and equity. In

those cases, the officials managing the procurement would normally have more flexibility to determine whether the answer to a question would confer a material advantage on the inquirer. Again, the application of the governing principles should come into play. If there would be an advantage, then all organizations that received a copy of the bid would need to be notified.

Once the deadline for submitting responses has passed, the general view is that inquiries from bidders should be kept to a minimum as follows:

- Process and timing questions are generally acceptable, e.g. when will a decision be made.
- Questions that relate to the content of a bid already submitted or evaluation criteria, trying to determine who is on the evaluation committee, etc. are generally viewed as not appropriate.

The State of Massachusetts's Procurement Code includes the following prohibition with respect to bidder communication similar to the Ontario practice:

Bidders are prohibited from communicating directly with any employee of the procuring department except as specified in this RFR [request for response], and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR [Request for Response – Massachusetts' generic bid request document]. Bidders may contact the contact person for this RFR in the event this RFR is incomplete or the bidder is having trouble obtaining any required attachments.

A closely related issue is that of Vendor Debriefings and Complaints Handling. As discussed in the next section in this report, the principle of a single point of contact carries over into policies and procedures relating to communicating with unsuccessful vendors in the post-contract award period. The best practice is to provide a single point of contact for debriefing unsuccessful vendors and a formal

process for hearing and adjudicating on vendor complaints. The expectation at all levels in the organization would be that complaints received by individuals would be referred to this process.

6. Vendor Debriefing and Complaints Handling

As noted at the outset of this report, procurement is seen as an inherently risky undertaking. Much of the discussion of risk focuses on risks associated with maintaining a fair, equitable, open, and transparent process. In this regard, the most important definition of success is often not whether the process resulted in the best value-for-money purchasing decisions, but rather whether it was challenged by any of the participants and was either sustained or found lacking.

Accordingly, the literature, expert interviews, and best practices from various jurisdictions emphasize the need for clear and transparent policies with respect to both post-award debriefings and formal complaints handling procedures as essential risk management tools. According to the State of Queensland's purchasing guidebook *Managing Complaints about Procurement*:

"Prevention is better than cure. Preventing complaints from occurring saves the department's/agency's and supplier's time and valuable resources. Many complaints originate through a lack of understanding and/or poor communication between buyers and suppliers."

Vendor Debriefings

Most experts agree that as a best practice, public sector organizations should have a standing expectation and procedure with respect to debriefing unsuccessful bidders once a contract award has been announced.

As described by the U.K.'s Office of Government Commerce, the benefits of debriefing include:

"For the buyer department or agency:

- *Identifying ways of improving the process for next time.*
- *Suggesting ways of improving communications.*
- *Making sure best practice and guidance is updated to reflect any relevant issues that have been highlighted.*
- *Encouraging better bids from those suppliers in future.*
- *Getting closer to how that segment of the market is thinking (enhancing the intelligent customer role).*
- *Helping to establish a reputation as a fair, open and ethical buyer with whom suppliers will want to do business in future.*

For the government and the wider public sector:

- *Demonstrating commitment to good practice and openness.*
- *Contributing to intelligence gathering about the market and its segments.*
- *Educating the market that the public sector is value-driven and not cost-driven.*

Potential benefits for the supplier:

- *Helping companies to rethink their approach so that future bids are more successful.*
- *Offering targeted guidance to new or smaller companies to improve their chances of doing business in the public sector.*
- *Providing reassurance about the process and their contribution or role (if not the actual result).*
- *Providing a better understanding of what differentiates public sector procurement from the private.”*

Some jurisdictions have established a threshold in terms of the value of the contract, below which vendor debriefings are not required for line departments. In the U.K., however, the central purchasing authority “strongly recommends” that debriefings be offered in all cases.

Typically, debriefings are voluntary rather than mandatory for vendors but, if requested, must be provided. In some jurisdictions, vendor debriefings are mandatory (usually as a condition of submitting a bid) for more complex or potentially controversial projects.

The literature and a review practices across jurisdictions indicates that debriefings are exclusively administrative in nature and generally not complex in terms of process. The latter means that telephone calls are generally acceptable although face-to-face sessions are often advised for more complex projects or controversial situations. In these face-to-face encounters, having other government officials present and taking minutes are also recommended practices.

In many cases, the requirement for vendor debriefings is clearly enshrined in formal purchasing policies, including in the example below from the State of Massachusetts the requirement that a vendor must request and participate in a formal debriefing as a precondition of launching the next stage of complaint:

“Non-successful bidders may request a debriefing from the department. Department debriefing procedures may be found in the RFR [Request-for-Response]. Non-successful bidders aggrieved by the decision of a department must participate in a debriefing as a prerequisite to an administrative appeal.”

Other jurisdictions prepare simple checklists for officials who are conducting debriefing sessions. As reported in Ontario-based Summit Magazine, the

following is one such checklist used by Purchasing Services of the Ontario Ministry of Health:

- *“If the debriefing is a face-to-face meeting, then establish the rules up front. Make it clear that the reason for the meeting is to explain the evaluation process and why the respondent was unsuccessful.*
- *Take time to explain the RFP evaluation process. Many times, the vendor does not appreciate the integrity and thoroughness of the process.*
- *Only discuss the proposal made by the unsuccessful party. DO NOT make comparisons between it and the winning proposal.*
- *Only refer to the evaluation criteria listed in the RFP. DO NOT make comments on matters unrelated to the RFP criteria.*
- *Use the evaluation spreadsheet that listed the scores for the unsuccessful respondent. Emphasize the weakness of the proposal as per the score. “Out of a total of 50 points ...your proposal scored 25.” Do not provide scores for any other specific proposals.*
- *Explain where the unsuccessful proposal ranked in the final scoring, but not in relationship to any other specific proposals. Say only that “Out of five proposals, yours ranked third (or fourth, etc.)” Do not mention the names of the other proponents.*
- *Only release a written statement of the individual score and/or the final score of the unsuccessful proposal.*
- *Point out the strengths of the respondent's proposal and acknowledge where the proposal scored well.*
- *Provide advice on how the respondent can improve their scoring in future proposal submissions.*
- *Confirm at the end of the session that the respondent is satisfied with the debriefing.”*

Handling Complaints

In terms of mitigating and managing risk, the literature, practices in other jurisdictions, and expert opinion emphasize the importance of clear, transparent policies with respect to reviewing complaints from bidders.

At its core, a formal complaints process is meant to be an additional physical embodiment of fairness, equity, and transparency and well as a further check on value-for-money decision-making on the part of public officials. Consistent with these principles, a well-developed complaints procedure is generally seen as something that bidders have a right to expect.

There are, however, other more direct benefits for the purchasing organization, including:

- The process reduces the likelihood of more costly and time-consuming lawsuits.
- Regardless of whether the complaint is sustained or denied, the process can provide useful information to the purchasing organization with respect to potential policy/process improvements.
- The process can be used in an ongoing way to communicate the integrity and effectiveness of decision-making by procurement officials.
- The process results in a body of *case law* that, assuming decisions are made public, can provide future guidance to public officials and the vendor community alike in terms of best practices.

Political Involvement in the Complaints Process

Experts point to another very important and generally accepted benefit for public sector organizations – the opportunity to insulate/protect politicians from the perils of becoming directly involved in the procurement process.

Political involvement in the complaints process tends to vary from jurisdiction to jurisdiction. In many Ontario municipalities, for example, this often takes the form of a deputation to Council or a Standing Committee of Council as the first level of response to the complaint, in some case even before the competitive process has been concluded. In other jurisdictions and at other levels of government, elected officials purposely avoid becoming the appeal mechanism for staff decisions on procurement. The latter approach is consistent with the literature, best practices in leading jurisdictions, and expert opinion. These sources generally emphasize that while complaints handling policies should be approved and mandated by elected officials, the public interest is best served by delegating the process to professional administrative staff.

This is not to say that the decisions of administrative staff should not be subject to appeal. However, many jurisdictions see the value of avoiding the involvement of elected officials in appeals. For example, the State of South Carolina allows for appeals of written staff decisions in response to complaints by striking a panel made up of:

- The chair of the policy committee of the state legislature that has responsibility for recommending procurement policy (i.e. has a direct stake in maintaining the integrity of the policy).
- Five representatives of various professions from outside government.
- Two public servants who were not involved in the original process or staff review of the complaint.

In the U.S. federal government, appeals of department procurement decisions are heard by the Office of the General Counsel of the General Accounting Office (GAO).

Typically, the delegated decision-making process is formal in nature involving:

- Clearly established roles and responsibilities within the department/agency.
- Training for officials involved in the complaints process.
- The review being conducted by someone other than the individual/department that was responsible for managing the procurement in the first place.
- A set time limit after a contract is awarded during which a complaint can be made.
- Set criteria for how the complaint should be presented, e.g. expectation that formal complaints will be made in writing.
- A formal internal review process that is at arms-length from the part of the organization that was managing the procurement.
- Reasons for upholding or rejecting the complaint should be recorded.
- The creation of a database of decisions that can be tracked and analyzed to identify trends, opportunities for remedial action, policy and process improvements, etc.
- A clear expectation that confidentiality will be respected regarding the complaint and that the complainant should not be victimised or harassed as a result of any complaint.

South Carolina sets an additional expectation that the senior official conducting the review will attempt to resolve the dispute without needing to resort to a formal hearing and written decision.

The U.S. federal government's GAO is also very clear in its policies with respect to the types of matters that are appropriate subjects for appeal and matters that are not considered appropriate.

One of the most important points about dealing with complaints, however, is to keep in mind that they are the "back-end" of the process and, as quoted at the outset of this section, "prevention is better than cure." The following is an extract from an article that appeared in Summit Magazine, written by Michael Tipman, a Principal at AMS Management Systems Canada, Inc. The article very effectively sets out the benefits of a well-developed and more systematic approach to quality assurance:

"Dealing with a challenge can be time consuming and costly to your department. Knowing the procurement rules and following them will ensure that you have done everything necessary to withstand a challenge. But to prevent a challenge – or minimize the risk of being challenged – there are a number of positive things that can be done while preparing for your procurement.

Getting the vendor community involved early is a good start. Publish a Request for Information (RFI) and follow up with those vendors that respond, meeting with them one-on-one to discuss their concerns. If their comments make sense and are fair, take them into consideration when writing the Request for Proposal (RFP).

Early on, hire a Fairness Monitor – an external third party who ensures that there is no built-in bias for any vendor or product. He will be worth every penny you pay him. He provides guidance on how to word the RFP, he monitors the bid evaluation process and helps to ensure that any rulings regarding issues with bids, evaluation criteria or rejection of a bid, are done fairly and consistently. He also helps at the bidder debriefing which follows the contract award. Although using a Fairness Monitor alone does not

guarantee that there will be no challenges, he does provide a level of assurance that all was done according to the rules set up for the procurement.

Keep the vendors involved throughout. Put out a draft of the RFP and take into account the comments of the vendor community when developing the final RFP. When writing the RFP, keep to simple wording and phrasing as much as possible. Now is not the time to impress the vendor community with your Master's Degree in English Literature. If the bidders feel that nothing has been hidden, chances are they will be less likely to challenge the result. However, no matter how careful you are you will discover that the RFP can and will be interpreted in a number of ways. This also goes for the evaluation criteria and the point allocation for each rated item. It helps to emphasize principle-based decision making rather than the blind application of rules. If the criteria turn out to make no sense, change them under control while being consistent.

Establish an Issues Resolution Team that includes as a minimum the Fairness Monitor and the Procurement Officer. Whatever the issue, rule fairly and consistently and, where there is some leeway in the ruling, try to give the bidder the benefit of the doubt. Record and save all issues along with their rulings – this provides proof that fairness and consistency prevailed throughout the evaluation process. In fact, good record keeping can be critical in the event of a challenge before the CITT. Make sure to document all the activity throughout the entire procurement process – don't shred project and bid evaluation material. Challenges have been won because the Crown could not prove that the procurement process was flawless.

Once the contract has been awarded, the Crown's last formal task is to debrief the bidders. They have a right to know where they went wrong and where they were strong in their bid. It is critical that they know how the process was done, that they were always given the benefit of the doubt and

that they clearly understand the reason(s) they failed. If the RFI/RFP process and the evaluation process are sound and the lines of communication have remained open between the Crown and the bidder, there is less chance that there will be a challenge.

However, even though you have been meticulous throughout the procurement – from RFP development to the awarding of the contract – there could still be a challenge. Plan for it from the beginning and you have nothing to fear.”

7. Role of Elected Officials

Experts suggest that in best practices jurisdictions – U.S. and Canada, federal, provincial/state, and municipal – elected officials understand the importance of remaining outside of the competitive tendering process. In this regard, it is generally viewed that one of the benefits of having a highly professionalized procurement function is the ability to insulate and protect politicians from allegations of attempting to influence procurement decisions.

In discussing the role of politicians, most experts emphasize the up-front role of elected officials to:

- Approve procurement policies, including identifying which types of projects require their express approval.
- Ensure that a professional purchasing infrastructure exists.
- Pre-approve the organization's purchasing requirements as part of the overall budget process.
- Approve any purchasing needs that exceed approved budgets before any formal purchasing activity is initiated.

For the most part, the above are seen as relatively straightforward and non-controversial. To the extent that problems with political involvement in the procurement process arise, however, they tend to be either during or at the back-end of the process, e.g. at the contract award stage or in the handling of debriefings and/or complaints

According to the experts, politicians do not always support fair and open competition, particularly when constituents are involved, i.e. not understanding that their direct intervention on behalf of a constituent would affect the fairness

and equity of the process for other bidders. Typical examples of poor practices on the part of individual elected officials include:

- Becoming directly involved in the development of request documents including involvement in the development of the detailed specifications.
- Attempting to provide direction to staff with respect to any aspect of the request document's development that would influence who might ultimately be able to bid on a project.
- Requesting or receiving copies of draft specifications or even complete request documents prior to their public release or outside of the formal internal approval process.
- Meeting with bidders and/or their lobbyists after a request document has been released. (According to experts, in best practice jurisdictions, elected officials often decline meetings with bidders/lobbyists at an even earlier stage, i.e. once a certain stage has passed in the request document development process.)
- Directing or attempting to direct staff to waive or disregard mandatory criteria from a request document, e.g. missed deadline for submission, incomplete bid document, late amendments to a bid document.
- Entertaining complaints from bidders and/or their lobbyists with respect to a current or closed competition instead of, as a matter of course, referring the complainant to the appropriate internal complaints resolution process.

As discussed in the previous section on *Single Point of Contact*, the best practice approach to dealing with political involvement during the competitive process is to establish the expectation that vendors and their lobbyists/agents will only communicate with the designated procurement official. At more senior levels of government (i.e. provinces, federal government) this prohibition would typically be in place until the contract award has been announced. At that point, unsuccessful vendors would be debriefed and complaints dealt with through the

formal complaints procedure. The prohibition is usually enforced via threat of disqualification.

At the municipal level, the practice is not as consistent. From the interviews and evidence from other jurisdictions, the municipal level of government in both Canada and the U.S. can be particularly problematic with respect to the involvement of elected officials in the procurement process. There is evidence from the public record that this is a recurring issue for many municipalities.

In Ontario, the perception within the procurement community is that elected officials in some municipalities are generally more accessible to procurement related lobbying than their federal or provincial counterparts. Furthermore, it was suggested that lobbyists at the municipal level (again, depending on the municipality) are often more intrusive, i.e. they make direct approaches to municipal councillors in terms of attempting to influence procurement decisions such as contract awards that were described as “unthinkable” at other levels of government.

A structural factor that contributes to this greater tendency – as discussed in the Toronto Computer Leasing Inquiry Research Paper *Municipal Governance Volume 1* – is the absence at the municipal level in Ontario of a system of strong Mayor/Ministerial/Cabinet accountability. Where this is present, individual legislators/Councillors are more insulated from administrative decision-making and the capacity of administrative officials to push back at individual attempts to influence is significantly strengthened.

Whether and to what extent an individual municipality will adopt a policy response to the problem appears depends to a large extent on the culture or personality of individual Councils. In some – but based on the sampling for this report, not many – jurisdictions (including the City of Toronto, as discussed in the Toronto Computer Leasing Inquiry Research Paper *Lobbyist Registration Volume*

2), direct lobbying of elected officials at all stages during and after the competitive process is generally viewed as legitimate and acceptable.

In other jurisdictions, a formal ban on this kind of contact is often seen as not being necessary because:

- There is a high degree of trust in the professional procurement staff.
- There is general but unwritten agreement among elected officials that this is not acceptable behaviour and that the political response to in-process lobbying should be “go see the professionals”.

Still other jurisdictions have established a formal *single point of contact* policy expectation. In some cases, this prohibition is in place until an award recommendation to the political level has been made public. At that point, there is no prohibition on vendors or their lobbyists contacting elected officials, although as reported in interviews, the practice is frowned on in many Councils and experts agree that this risk to the integrity of the process should be actively discouraged. In other cases, the single point of contact prohibition is in place until an award has actually be made and announced. At that point, the policy provides that both elected officials and public servants would refer unsuccessful bidders to the formal complaints process. Examples of these policies are provided in *Appendix B*.

In terms of contract awards, the interviews indicated that most municipalities refer relatively few awards to the political level for formal approval. The generally accepted best practice appears to be that if an item was budgeted for, and the lowest bidder has been selected, Council approval is not or should not be required. At the same time, it is a general practice that projects with a high degree of political sensitivity or that were not the lowest bid should go to Council for approval of the award.

None of this is to suggest that elected officials do not have a right to know what their staff are doing. In terms of governance, the issue is how they should become aware. As discussed in the Toronto Computer Leasing Inquiry Research Paper *Municipal Governance Volume 2*, experts have suggested that elected officials do not always have a clear understanding of the kinds of accountability mechanisms that can be used to ensure their officials are operating in accordance with policy, e.g. compliance reporting mechanisms, policy compliance audits or reviews, etc. All too often, according to the literature on governance, the response is to more directly oversee individual operational decisions (referred to by many as *micro-managing*) or in the worst-case scenario, to take those decisions on themselves.

It is also important to make the distinction between micromanaging and approving very large purchases. In most jurisdictions, it is common for extremely large purchases to be approved at the political level. Staff would typically provide a briefing to clarify and demonstrate that:

- The contract award is within the budget for this item already approved by Council/the government.
- The appropriate process in accordance with corporate policy was followed.

Experts suggest that politicians who understand their role and the importance of fairness and equity in procurement would tend to focus on quality assurance, i.e. whether the approved process was followed and used appropriately. Only in the most exceptional circumstances would a staff recommendation be rejected or a competition cancelled. Even more usual would be for a Council or Standing Committee to ignore a staff recommendation and make an award to another bidder.

Where this kind of understanding does not exist, the political level can often become overly and in the view of many experts, inappropriately involved in the

details of the award. This could include wanting to review the RFP in detail, wanting to see actual bid documents, scrutinizing individual evaluations, meeting with individual vendors, etc. At its most extreme – and in terms of the integrity of the process, highest risk – this could involve a Council or Standing Committee beginning to engage in re-evaluating the bids and making its own decision about the outcome.

From the literature and expert opinion, it is generally recognized that some elected officials will always resist any attempt to prescribe their behaviour in the procurement process for a variety of reasons:

- Some elected officials will argue it is, in fact, their role to have this kind of hands-on involvement in administrative matters and that this is an important and appropriate counterbalance to the power of the bureaucracy – in essence, the *governor vs. manager/trust in the bureaucracy* debate that was discussed in more detail in the Toronto Computer Leasing Inquiry research paper *Municipal Governance Volume 2*.
- Some elected officials may simply believe that no process should restrict their ability to hear from any member of the public on any issue at any time. (The Mayor of Alameda, California, in rejecting a staff recommendation to prevent lobbying of elected officials during the procurement process, made a typical statement in this regard in that “he opposes the lobbying restriction because as an elected official, he will be accessible to anyone who wants to talk to him.”)
- Depending on the Council, vendors and their lobbyists are seen as providing significant hospitality opportunities for Councillors.
- For some Councillors, accessibility by vendors and their lobbyists is often directly connected to fundraising opportunities. Any measures designed to limit or restrict access by vendors/lobbyists or restrict actions that individual Councillors may take in response to or on behalf of vendor

lobbying (i.e. publicly championing the cause of unsuccessful bidders rather than relying on established complaints handling procedures) could negatively affect fundraising capacity.

Confidence in the Procurement Professionals

As indicated above, not all of the pitfalls in the procurement process relate to policies and procedures. The nature of the relationship between elected officials and administrative staff also has an important bearing on the determination of a best practice jurisdiction. Procurement experts and practitioners suggest that political confidence in procurement professionals and senior management team is an essential precondition of any jurisdiction/organization wishing to be considered as having best practices in procurement. As one interviewee indicated, the root issue is *“how much authority does Council want to give the senior administration to manage the business of the City? You have to settle that question and then flow it down throughout the various levels.”*

The general expert opinion from the literature on governance is that governing bodies that do not trust their staff to manage processes and make decisions in accordance with policy need to deal with this trust issue *head on*. This could mean reviewing policies, receiving regular purchasing decision variance reports, etc. and even disciplining or dismissing/replacing staff.

8. Training and Development

In discussions with experts and as demonstrated in the approach of many jurisdictions, the importance of having highly trained and professional procurement staff is a key component of risk mitigation.

Fortunately, professional development in procurement is a recognized, well-developed, and established aspect of the profession. This is reflected in the emphasis it receives in the professional literature and the vast array and depth of training and development opportunities for procurement officials. Training includes in-house courses run by central purchasing authorities or offered through various state, provincial, and national professional purchasing associations.

Experts and leading jurisdictions stress that the foundation of training and development for procurement is the core principles. The thinking in this regard is that an understanding of rules, processes, techniques, analytical frameworks and tools, checklists, is only a component of the best practice approach.

As discussed earlier in this report, these leading jurisdictions recognize that it is neither possible nor desirable to prescribe the appropriate course of action for staff in every given situation. This not only stifles creativity but also limits the flexibility necessary to make appropriate decisions in different situations. Equally important is the need for staff at all levels to understand the core principles and in particular, how to apply these principles in situations that are not covered by rules or procedures and for management actions to be governed accordingly.

In leading jurisdictions, the commitment to training and professional development of the procurement function is clearly articulated, most often as a subset of a broader commitment to training and development of the public service in general.

The U.K.'s Department of Trade and Industry rationalizes its commitment in this area as follows:

“Staff undertaking procurement activity, however small a part of their job this might be, are utilising public funds provided by the taxpayer. The activity carries with it an obligation to maximise the value for money obtained from the scarce resources expended, by achieving an optimal combination of cost and quality and minimising transaction costs.”

For leading jurisdictions, this includes minimum training and certification/recertification requirements for all staff involved in the procurement process, i.e. the analyst/coordinator level, specification writers, evaluators, managers, and senior executives. In terms of specificity and intensity, this training typically makes distinctions between and among positions in terms of their importance to the procurement process.

It also includes an express commitment to procurement as a professional speciality within the public service in terms of:

- The need to create a professional environment that ensures the retention of highly skilled and valuable professional staff.
- The importance of ensuring ample and rewarding career development opportunities for staff.
- The importance of ensuring that their organization can attract experienced professionals from other government organizations and sectors.

The U.K. government is an example of this kind of practice in the creation of Government Procurement Service (GPS). This branch of the public service was created in 1999 with the stated purpose of establishing procurement as a professional discipline in government, analogous to accountants and auditors. The official objectives of the GPS are:

- *“To enhance procurement’s contribution to the achievement of government objectives by ensuring the availability of staff with appropriate skills, experience and qualifications to deliver professional, ethical and legally compliant processes;*
- *To provide departments and GPS members with best practice guidance on training, career developments, and related issues to help ensure the best match of procurement staff to posts; and*
- *To provide GPS members with information on employment opportunities and a mechanism for more effective career management.”*

The stated benefits of the GPS are also clearly articulated (and are aligned with the more general emphasis in the theory and best practice of good management with respect to the value of investing in training and development):

- *“Providing for enhanced career opportunities through the provision of a career record management system, with procurement vacancy listings across government - the system may be further developed to provide opportunities for secondment to industry and the wider public sector.*
- *Ensuring better information on remuneration to help expose the real value of skills and inform the setting of appropriate remuneration bids.*
- *Providing for better-focused training and development plans for individuals, consistent with Investors in People requirements.*
- *Supporting the non-procurement line manager by providing a link to the Head of Procurement for training and career development issues.”*

In departments of the U.K. government that have a significant procurement function, staff involved in procurement are identified as being in “key” and “designated” procurement posts and as such are required to register with the GPS. The Service is, however, also open to other staff who are interested in a career in procurement, e.g. those with some work experience in the area but who

have since moved on to other areas, or those whose current involvement in procurement is more peripheral.

Australia and New Zealand share a similar, formally stated understanding of the importance of training and development in procurement:

“Chief Executives are responsible for managing their agency's procurement functions and should ensure that staff undertaking procurement have appropriate skills and training. To enable procurement to be conducted correctly, it requires a high level of procurement knowledge and skills. Officials undertaking procurement need to develop a comprehensive understanding of procurement and associated policies as well as subject matter expertise to ensure they are informed buyers.”

In best-practice jurisdictions, the commitment includes the extensive use of formal and self-managed training instruments in addition to traditional policies and procedures manuals. A number of jurisdictions included in this review have a wide range of resources available to the staff including:

- Internal and external training and certification opportunities.
- Extensive collections of interpretive guidebooks that are meant to supplement more formal policies and procedures.
- An array of ready-made analytical frameworks, including business case development, risk management, value-for-money assessment, etc.
- Regular internal newsletters for procurement professionals.
- Regular releases of tip sheets and checklists.
- Case studies of real life situations and how the principles should be applied in determining an appropriate resolution.

The Canadian federal government through Public Works and Government Services Canada and the Australian State of Queensland are noteworthy

examples of jurisdictions with a plethora of training materials, best practice guides, tools, and templates, available on the internet for staff.

The U.K.'s Office of Government Commerce (OGC) is perhaps even more extensive in this regard. The OGC maintains an exceptionally extensive on-line (and publicly accessible) service of training opportunities, a one-stop procurement "successful delivery toolkit", a comprehensive on-line library of best practices, frameworks, templates, analytical tools, and background information on new and emerging developments in procurement. These materials cover not only the core procurement process, but also related areas such as supplier management, contract management and sub-specialities such as e-procurement and IT procurement.

9. Evaluation

The evaluation process is considered by experts to be a potential risk in terms of ensuring that:

- Evaluators have sufficient capacity, training, skill, and experience.
- The evaluation process is conducted with due regard to safeguarding and maintaining the integrity of the process and at the same time ensuring value-for-money.

The most commonly reported problems with respect to evaluation include:

- Evaluation criteria are flawed, ambiguous, or subject to change midstream during the process.
- Evaluation criteria are not followed or applied properly, most often through a lack of experience or knowledge.

Best practices in training and development are discussed in more detail beginning on page 62 of this report. As indicated, leading jurisdictions provide extensive training and other supports such as guidebooks, checklist, best practices, analytical tools, etc. to assist procurement professionals. In terms of subject matter, evaluation is typically a major area of focus within both the formal curriculum and other less formal educational supports.

With respect to evaluation criteria, the most important piece of advice from experts and the literature alike is that these criteria should be firmly established before the evaluation process begins. Mid-stream changes are usually the result of incomplete or inadequate preparation. The important message is that the integrity of the process is frequently placed at risk if criteria are left out or added during the actual evaluation. For example, the Province of Ontario's directives specify that:

“Ministries must take particular care in evaluating submissions and proposals against the stated mandatory requirements. Ministries must consistently apply all mandatory requirements set out in a request for qualifications or proposals to all submissions and proposals.”

The State of South Carolina’s purchasing policy states that:

“Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weighting that have been previously assigned”.

The State of Queensland, Australia provides a similar caution:

“Under no circumstances should new or revised evaluation criteria be introduced during the evaluation of offers. Take the time to think carefully about how you plan to select the best offer and be sure to ask the suppliers to provide you with all the information that you might need to fully evaluate their offers.”

Queensland goes on to advise managers and staff about the “ultimate price” of any attempt to adjust criteria in-process to compensate for proposal shortcomings.

“You may find it difficult to rule out an otherwise high quality offer because of a minor technical non-compliance. This is natural, especially when the offeror is well known in your department or agency as a quality provider. However, the principles of fair process and probity mean that you have very little choice. It is up to offerors to get their offers right, not for you to be making allowances for their failure to do so. There have been many examples of court cases where a purchaser did not rule out an offer which was technically non-compliant and that offer was subsequently selected as the winning offer. Court cases such as this cost time, effort and

money, damage relationships with suppliers and are embarrassing for the Government.”

In terms of developing evaluation criteria, as mentioned earlier, formal training in this area is a focus for many jurisdictions. Again the creation of an accessible library of templates, examples of high quality evaluation approaches, sample evaluation sheets, etc. emerges from the literature as an accompanying best practice. The following from Queensland demonstrates the latter approach:

“A typical plan would contain the following information:

- Objectives of the purchase being undertaken;*
- A description of the requirement and the deliverables;*
- Details of the administrative arrangements for handling the offer documentation to ensure integrity of the process and to manage communication with offerors during the evaluation stage;*
- Listing of the evaluation criteria to be applied in evaluating offers received. (These must be consistent with the criteria identified in the invitation documentation, especially with regard to which criteria are mandatory);*
- Details of officers to be involved in the offer evaluation including their major responsibilities. (This section should also include details of any internal specialists to be consulted and any consultants to be contracted for the performance of the evaluation);*
- An evaluation timetable showing the key evaluation activities and a timeframe for their completion;*
- Details of the offer evaluation method to be used in screening, shortlisting and selecting offers. (Procedures for offer clarification should also be stated. If applicable, guidelines for site visits should be included in this section;*

- *Details of financial and/or contractual approvals required to complete the purchase);*
- *Details of any progress reports which are required; and*
- *Arrangements for providing feedback to unsuccessful offerors should also be outlined.”*

The literature and interviews indicate the use of evaluation panels as a generally accepted best practice. The composition of the evaluation panel is considered important in terms of ensuring a high quality outcome. There is a consensus that these should be multi-skilled/multi-disciplined teams, including individuals from outside the buying department.

In some jurisdictions, the use of evaluation panels is a standing best practice – taken, in effect, as a “given” – as opposed to an expectation formally described in guidelines, policies, or statutes. In other jurisdictions, guidelines that are more specific are provided to purchasing staff that include descriptions of what an evaluation panel should include. In still other jurisdictions, particularly for more complex undertakings, the requirement to have an evaluation panel is more formally enshrined in policy and in some cases actually legislation. This often goes beyond the stating the actual expectation to include direction with respect the composition of the panel.

For example, the State of Queensland’s handbook on evaluation includes the following approach in the form of a suggested best practice:

“An evaluation will typically involve input from at least the following groups of people:

- *Departmental/agency managers who normally exercise financial delegations and/or oversee the purchasing process for probity and compliance with Government policies.*

- *Purchasing/procurement officers who need to work together with management, end-users and financial, legal and technical experts to achieve procurement results. (Purchasing officers also have responsibility for understanding the market, ensuring that Government policies are adhered to and for negotiating with suppliers to achieve the best result)*
- *End-users who need to specify what is needed and work together with managers and purchasing officers to get what is required.*
- *Technical experts who understand and offer guidance on the technical requirements.”*

In the State of Utah, evaluation panel requirements are enshrined in the formal policy:

“A formal selection committee must be established to evaluate proposals received for consultant and other selected types of services. This is due to the sophistication and complexity of this type of procurement. A committee should represent a variety of disciplinary skills to evaluate proposals. The following is a general discussion of how a committee might be formed.

Members should be appointed by the agency seeding proposals with approval of selection from the Purchasing Agent. There should be one other member from a separate state agency experienced in the same or similar field to which the proposal applies. This person will not participate in the project being bid and must be completely impartial in making an award recommendation.

The following summarizes the expertise the members could bring to the evaluation committee:

- *Agency – (three members): technical knowledge (program representation), general business, administrative, fiscal expertise (administrative representation).*
- *Purchasing Office (optional) – (one member): procurement expertise (responsiveness to RFP).*
- *Third Party – (one member): technical expertise, fresh look, no vested interest, objectivity.*

Vested talents are desirable so the evaluation committee can recommend the most economical proposal to meet the state's needs with the highest probability for a successful project. The committee must impartially evaluate the merits of each proposal. The committee should involve legal counsel if needed to make its recommendation.”

Additional best practices with respect to integrity in the evaluation process include:

- Identifying and eliminating potential conflict of interest by measures such as requiring participants to sign a conflict of interest and confidentiality undertaking as a condition of participation.
- Requiring participants to undergo mandatory training with respect to their responsibilities and methodologies, as part of ensuring consistency of approach and adherence to policy and principles.
- Ensuring that there is communication among evaluators, including reviews of scores and discussion of major differences. This is intended to ensure that all evaluators have a common understanding of the bid document and that scores are not unnecessarily skewed through misinterpretation of one or more elements.
- Requiring the chair of the panel to certify at the end of the evaluation process that the committee conducted itself in accordance with policy.

- Including an external fairness observer (see the discussion of the use of fairness commissioners on page 88), again as part of ensuring consistency of approach and adherence to policy and principles.

Oral presentations by bidder are viewed as critical for larger, more complex projects in order for evaluators to get a better overall sense of the vendor's proposed team and related strengths and weaknesses – judgements that are generally recognized as being difficult to make based on written submissions. Experts stress that the actual people who will be delivering the service from the vendor organization should be required to make the presentation.

In addition, it is increasingly recognized that all request documents should include the weighting formula. As reported in the literature, this is often not the case. However, most experts suggest that this kind of disclosure is critical from at least two perspectives:

- Protecting the integrity of the process by ensuring that all proponents understand how their proposals will be evaluated.
- Reducing the possibility of arbitrariness on the part of the evaluators.

Finally, most experts in leading edge practices emphasize that there is little advantage in withholding useful information from vendors and that a goal throughout the process should be to provide vendors with as much information as possible. This includes both the content of the request document (providing the evaluation criteria and weighting system) but also providing structured opportunities in advance of the request release to provide information to and engage in dialogue with potential bidders.

According to procurement expert Michael Asner:

“Unfortunately, some organizations do not publish the weights. They offer little guidance to suppliers. They believe that the suppliers should

somehow know and propose the particular combination of their products, services, and solutions that fits the requirements best.”

As noted by Asner, some jurisdictions such as the State of Alaska feel strongly enough about this best practice that it has been enshrined in the State's procurement regulations.

10. Clear Roles and Responsibilities

Experts and practitioners alike agree that a lack of internal clarity with respect to the relative roles and responsibilities of different players in the procurement process poses a high risk for both the integrity of the process and the likelihood of a value-for-money outcome. This includes roles and responsibilities for the central purchasing authority, the buying department, legal counsel, finance/budget staff, etc.

The best practice in this area is relatively straightforward – to identify and describe these roles and responsibilities in clear and unambiguous terms as part of the overall purchasing policy and to embed these descriptions in training, guidelines, handbooks, checklists, case studies, etc. as part of ensuring a clear and consistent understanding across the organization.

There are very many examples of roles and responsibilities descriptions from other jurisdictions. The best of these are at reasonably detailed level. For example, Massachusetts in its *Procurement Policies and Procedures Handbook* provides a very extensive description of the roles and responsibilities of:

- The central purchasing authority.
- Various functions, including individual team leaders within the central purchasing authority in particularly in relation to the services that line departments can expect from the central service.
- The line departments.

The distinction is also made between and among roles and responsibilities for procurements that are to be managed by the central purchasing authority on behalf of a line department, as compared to situations when the line department will manage its own procurement in accordance with approved delegations of

authority. Depending on the type of procurement, the rules are specific with respect to which part of the organization (central purchasing authority or line department) is accountable for decision-making, for maintaining records, and ultimately for defending the process and/or the decision.

The U.K.'s Department of Trade and Industry has developed a simple table for the purposes of quickly communicating in this area:

Table -1: Roles in the pre-tendering phase

ROLES FUNCTIONS	Budget Holder	Line Manager	End- User	Purchasing Staff
Procurement arrangements		✓		
Business Case				
preparation			✓	
approval	✓			
Specification			✓	
Requisitioning			✓	
Sourcing				✓
Strategy				
preparation			✓	
approval		✓		
implementation				✓

Table -2: Roles from tendering to ordering

ROLES FUNCTIONS	Budget Holder	End- User	Purchasing Staff	Third Party
Quotations			✓	
Tendering				
ITTs				
evaluation		✓	✓	✓
negotiation			✓	
Debriefing			✓	
Ordering				
preparation of entry form		✓		
initial authorisation	✓			
data entry			✓	
final authorisation	✓			
issue of purchase order			✓	

Table -3: Roles from receipt onwards

ROLES FUNCTIONS	Budget Holder	Liaison Officer	End- User	Purchasing Staff	Finance Staff
Certifying receipt		✓	✓		
Payment					
authorisation				✓	

processing					✓
Contract Management		✓			
Disposals					
request			✓		
initial authorisation	✓				
implementation				✓	
final authorisation					✓

The following is an additional example from the U.K. Treasury’s policy, dealing with the specific sub-issue of the appropriate distinction between financial and purchasing authorities:

“Within devolved budgeting arrangements there should be separation of financial authority and purchasing authority (other than for standard call-off arrangements). Budget holders should have freedom to commission orders by specifying their requirements and providing financial authority for the expenditure. The authority to place that order should be in separate hands. In addition, there should be an appropriate separation of duties within the purchasing cycle between staff who place orders, those who receive goods or services, and those who authorise payment. Separation of functions should be designed both to provide necessary safeguards against impropriety or unethical practice and to ensure achievement of value for money.”

Suggested key central purchasing authority responsibilities, as defined by the National Institute of Governmental Purchasing (NIGP) include:

- *“Assisting user departments to select the most appropriate purchasing methods, and to develop and write purchase specifications, statements of work, bid evaluation formulas, and proposal evaluation methodologies.*
- *Compiling and maintaining lists of potential suppliers.*
- *Participating in decisions whether to make or buy services – that is, whether to provide a service in-house or contract it out.*
- *Securing quotes, bids, and proposals and working with the user departments to evaluate the offers received.*
- *Awarding contracts on behalf of the user departments.*
- *Maintaining continuity of supply through coordinated planning, and scheduling, term contracts, and inventory.*
- *Seeking to assure the quality of needed goods and services through standardization, inspection, and contract administration.*
- *Advising management and user departments on such matters as market conditions, product improvements and new products, and opportunities for building (proper) goodwill in the business community.”*

11. Efficiency and Effectiveness/Value for Money

Within the procurement community there is apparently a perennial debate with respect to the appropriate balance between centralized and decentralized management of the procurement function. This includes the extent to which line departments need administrative flexibility to make efficient management decisions vs. greater emphasis on more formal and centrally driven rules-based approaches.

There is some suggestion in the research and also indicated in interviews, that over the past several years, there has been an increasing emphasis across jurisdictions on centrally managed, rules-driven processes. In general, this has been in response to public, vendor, and political perceptions with respect to fairness, court or other challenges of awards, etc.

The existence of this debate does not mean there are questions about the foundation principles of fairness, equity, transparency, etc. and the importance of minimizing the incidence of process challenges. However, from time to time, central purchasing authorities, line departments, and vendor community express concern that overly prescriptive approaches do not always result in the best value for money. The general sense is that increased emphasis on formal and more extensive process can result in increased costs and delays for both the vendor community and government and can distort the appropriate relationship between the cost of competing and the actual value of the contract to the vendor.

With respect to the structure and organization of the procurement function in most jurisdictions, it is important to clarify that this centralized/decentralized debate is in effect a matter of degrees of difference rather than fundamentally opposing views. The standard in place in most jurisdictions considered in this review is a centralized purchasing authority, with a certain amount of delegation

to line departments. The Institute of Supply Management offers the following typical descriptions of the advantages of centralization:

“High level of buying expertise, lower operating costs through central coordination of purchasing activities, avoiding duplication of effort, better prices, and providing more time for line managers to manage (rather than engage in procurement activities).”

The U.S. Council of State Governments also lists some of the benefits of centralization, not the least of which is cost savings:

“An effective central purchasing program reduces the cost of government. It inspires public confidence in government. It directly improves the quality and timeliness of services rendered by program departments and agencies. It is government’s meaningful link to the business community; it promotes honesty and integrity throughout governmental operations.”

Notwithstanding the advantages of a centralized approach, most jurisdictions recognize that it is neither efficient nor effective to make all purchases centrally and that the key is achieving the right balance.

In many jurisdictions, the central purchasing authority’s responsibilities typically include:

- Organization-wide purchasing policies, standards, training and certification requirements, etc.
- Responsibility for establishing standing agreements, vendor of record arrangements, blanket contracts, procurement cards, etc.
- Managing the procurement of goods and services over an established dollar value threshold.
- Monitoring compliance across the organizations and reporting on performance to senior management.

- Continually analyzing the organization's business requirements and identifying opportunities for additional savings, more strategic approaches, etc.

In addition to working with the central purchasing authority on centrally managed purchasing opportunities, trained/certified staff in line departments usually have responsibility for making purchases of particular types and below specific thresholds in-department. In all cases, line department purchases are to be made in accordance with corporate purchasing policies and procedures and existing financial delegations. Typical direct purchasing by line departments includes:

- Micro-value petty cash purchases (in effect, a sole source decision).
- Purchases up to a certain predetermined value made with the centrally managed procurement card ("p-card").
- Drawing down on existing standing offer agreements or blanket contracts.
- A competitive process of some sort (typically receiving three quotes from known, qualified bidders) for purchases up to a certain level (also known as a departmental purchase order or DPO).

Beyond the DPO level, the competitive purchasing process is often managed by the central purchasing authority. Also, it is important to note that the best practice in leading jurisdictions is to maximize the use of centrally managed p-cards, standing offers, blanket contracts, etc. for the repeat purchases (this could include clothing, food, utilities, repairs, etc.) This means that the competitive process should, for the most part, be reserved for items that do not fit as part of one of these approaches. The research suggests that organizations that make extensive use of p-cards, standing offers, and blanket contracts, have significantly lower requirements for DPOs.

In this division of responsibilities between the central authority and line departments, one of the key considerations appears to be value-for-money. This is a concept that has been written about extensively in the professional literature on procurement. It has many dimensions, but at its core is the need to strike the right balance between more extensive rules-driven processes that are intended to ensure fairness, equity, etc. and the very real need for efficiency and effectiveness for both government and the vendor community. In layman's terms, this means matching the complexity of the procurement process with the value and complexity of the contract.

According to the Government of Australia:

“To achieve best Value for Money, procurement must be efficient and effective. Officials approving expenditure proposals must satisfy themselves that the proposed expenditure will make efficient and effective use of public money. As no single purchasing method suits all situations the Government does not prescribe a specific purchasing method nor any arbitrary thresholds. Buyers must consider the requirements and existing market conditions of each procurement, and select a procurement method on its merits.”

The essential theme here is that “no single purchasing method suits all situations”. In practical terms, this means that a government that relies almost exclusively on the formal competitive process (i.e. an open, publicly advertised, sealed bid competitive process) for all purchases over minimum thresholds will not be achieving value for money. Likewise, a government that relies almost exclusively on legitimate but more informal approaches such as soliciting three quotes from known, competent suppliers will not be demonstrating the values of fairness, equity, and openness. The State of Massachusetts, in its procurement handbook, describes this in the following terms – emphasizing the benefit of being able to align internal procurement resources more effectively and efficiently:

“Achieving best value procurements is defeated if the procurement process is cumbersome and inefficient. Although this handbook defines several minimum procedural steps for a procurement, procuring departments are empowered to design a procurement process that achieves results within their required time frames. Simple procurements may be done quickly, allowing departments to devote the appropriate amount of time to more complex or larger procurements.”

By way of explanation, it is important to note that use of the terms *formal* and *informal* within the professional procurement community should not be taken to mean that one process is more legitimate than the other. Both are technical terms used commonly in the profession. “Formal” generally refers to a fully advertised, competitive sealed bid process. “Informal” generally refers to the process of obtaining a smaller number (typically three to five) quotes from known suppliers either through email, fax, in writing, or over the telephone.

Notwithstanding the Australian position that each situation is different and should be judged on its own merits, most jurisdictions reviewed for this study have established standards that are meant to guide staff decision-making. Typically, these standards not only establish where and when a formal process (advertising, competitive sealed bidding process) is required but also the threshold above which the central purchasing authority takes over management of the procurement process. The generally applied rule is that the need for central management of the process increases with the complexity of the project.

With respect to DPOs, the research indicates a high degree of consistency in both regards at least at the municipal level. A 2001 study by the University of Arizona’s Centre of Advanced Procurement Studies found that larger U.S. municipalities (over 500,000 in population), established DPO levels anywhere between \$1,000 and \$5,000 (U.S.) Some Ontario jurisdictions are higher – the City of Ottawa for example at \$10,000 (Cdn.) but this appears to be at or near the

upper limit. The generally accepted best practice for DPO purchases (i.e. purchases that are not covered by p-cards or blanket contracts) is one of using an informal competitive process, i.e. using a minimum of three quotes from known suppliers. However, some jurisdictions – the State of Idaho for example – leave that decision to the discretion of individual departments. In most jurisdictions, the line department flexibility in this regard is balanced by their accountability for the price-value component of its decision.

With respect to the appropriate DPO threshold, the research suggests that it is important not to become too focused on this issue. What appears to matter more is whether and to what extent purchases above the DPO maximum (including purchases above the threshold requiring management by the central purchasing authority) can be made using similar informal practices.

Again, the practice across municipalities appears to be to use the three-quote process up to a specified threshold for most goods or services. For example,

- Halton Region’s policy relies on the informal process for purchases up to \$25,000. Above that level, a formal, advertised, competitive sealed bid process is required and is managed by the City’s central purchasing authority.
- The City of Cambridge allows for informal quotes for purchases up to \$20,000. A formal process – managed by the line department – is required for purchases up to \$100,000. Above \$100,000, the process is managed by the central purchasing authority.
- The City of Ottawa has a threshold of \$25,000 before requiring a formal procurement process.
- The City of Anaheim, California allows an informal process for purchases between \$5,000 and \$20,000. Between \$20,000 and \$50,000 requires a formal sealed bids but the process can be limited to a subset of known

buyers. Above \$50,000 requires a formal sealed bids and a fully advertised competition.

- The City of London, Ontario allows line departments to use the three-quote process for requests for quotes up to \$50,000, without requiring the involvement of the central purchasing authority.

The above municipal examples are generally in line with what is in place at more senior levels of government:

- The Ontario Government allows for an informal process below \$25,000 managed within each department. Above that level, a formal competitive sealed bid process through the central purchasing authority is required. For information technology, where a Vendor of Record list exists, ministries can obtain three quotes from listed vendors up to \$249,999.
- The State of Louisiana requires that three quotes be obtained up to \$5,000 and five quotes up to \$20,000.
- The State of Arizona establishes the level above which a formal sealed bid process is required at \$35,000.
- The State of Massachusetts allows for three informal quotes for contract values up to \$50,000 and requires a full, competitive sealed bid process above that amount.
- The U.K. Department of Trade and Industry requires three informal quotes for purchases up to £10,000.

As noted earlier, the thresholds described above apply to a broad range of goods and services. One common area of exception is consulting services. In many jurisdictions, the threshold for requiring a formal process in the purchase of consulting services is somewhat higher. For example, the City of Ottawa allows for a variance in its approach – including sole sourcing as a possibility – for

consulting contracts up to \$50,000. The State of Idaho allows for the informal three-quote approach for consulting contracts up to \$50,000.

12. Fairness Commissioners

As discussed throughout this paper, effective public sector procurement needs to be seen at all times to be fair, equitable, and transparent. Yet, notwithstanding the high level of professionalism that exists in many jurisdictions, the public, vendor, and/or political perception can often be negative in this regard.

From the literature, practices in other jurisdictions, and expert interviews, it is apparent that the use of fairness commissioners is an important emerging risk mitigation tool aimed at strengthening both the reality and perception of integrity in public procurement.

A fairness commissioner is an individual who monitors the procurement process with a view to:

- Providing the purchasing organization with assurance that procurement management practices and processes are of the highest standards.
- Communicating/demonstrating to external and internal observers that fairness, objectivity, impartiality, clarity, openness & transparency have been maintained.

The Commissioner can be an internal person (e.g. from the central purchasing authority), often at the invitation of the line department and particularly where there is some foreknowledge or anticipation of a higher than normal degree of external scrutiny. For larger, more complex projects, it is much more likely to be an external expert mandated by the central purchasing authority.

According to Ottawa-based Partnering in Procurement Inc. (PPI), a consulting firm that specializes in this kind of service, the value/role of the fairness

commissioner includes (see *Appendix C* for a more detailed description of roles/benefits developed by PPI):

- *“Providing assurance to both the contracting authority and the vendor community as to the fairness and integrity of the procurement process.*
- *Monitoring and reporting at key points in the process in the context of maintaining alignment with the original procurement objectives.*
- *Identifying any policy, financial and/or technical issues that may not have been readily apparent to the project implementation team at the start of the project or may arise during the process.*
- *Establishing and articulating a set of principles and operational requirements against which the actual conduct of a tendering process is assessed.*
- *Examining how the specification of requirements and assessment and selection criteria were developed.*
- *Identifying any ambiguities in the stated objectives of the procurement initiative.*
- *Assessing and assuring clarity in all vendor information and solicitation documents relative to the product or service requirements and the assessment criteria and selection methodology.*
- *Examining how the weighting of financial and non-financial factors (quality and reliability of service) were developed.*
- *Verifying that the processes followed are consistent with relevant statutes, regulations, public policy directives, administrative guidelines and best practice principles.*
- *Identifying and reporting on any actual or potential conflicts of interest for Project or Evaluation Team members that may impair their ability to participate in the evaluation of responses.*

- *Providing oversight, guidance and advice to evaluation teams to ensure consistency, lack of external influences, compliance with policies and guiding principles, and lack of bias.*
- *Providing an independent, real-time opinion on fairness issues throughout the procurement process and an independent report whether the concluded process has or has not met all the requirements for fairness, openness and transparency.”*

Experts in both the public and private sectors suggest that having a fairness commissioner results in a higher level of confidence by prospective bidders that the process will be managed fairly. There is evidence to suggest that the private sector is less likely to challenge a particular procurement if a fairness commissioner has been involved. Generally, this can result in organizations having more flexibility to consult with vendors on a one-on-one basis during the pre-release period.

Increasingly, jurisdictions – to date more likely to be at the state/provincial or federal level rather than at the municipal level – are turning to fairness commissioners. In Ontario, for example, internal and external fairness commissioners are emerging as standard for larger projects. In the federal government, they are even more prominent as part of that jurisdiction demonstrating its adherence to international trade agreements. In some jurisdictions, such as the Australia federal and state governments, the practice is even more formalized. Tasmania has created a *Probity Adviser* (aka fairness commissioner) *Panel Directory* – in effect, a list of pre-qualified fairness commissioners who have been selected to assist with the management of complex procurements.

According to Transparency International, a CIDA-funded, international advocacy organization headquartered in Berlin, Germany and interested in transparency and access to information:

“The role of ‘outsiders’ is basically to hamper the creation of insider relationships of ‘trust’ during the decision-making and implementation processes. Procedures should focus on keeping ‘outsiders’ as ‘outsiders’, and not allowing them to be drawn into internal processes. Like external auditors, the ‘outsiders’ should provide expertise combined with integrity. Outsiders can assist in preparing bidding documentation (especially independent consultants with public reputations to defend). Outsiders can participate in evaluation (adding an independent ‘audit’ note of concurrence or otherwise).”

The greater prevalence of and interest in fairness commissioners is generally viewed as arising from procurement processes and procurements becoming more complex in response to changing external and internal requirements.

These include:

- Increasingly complex public-private contracting arrangements, such as risk/benefit sharing arrangements, public-private partnerships, etc.
- New forms of contracting with private sector interests for access and use of the enabling capabilities of new technologies both to improve service delivery and manage complex delivery requirements in new ways.
- New forms of contracting with private sector interests for both financing and managing infrastructure renewal and program and services delivery.
- New forms of procurement collaboration, partnering or contracting (including funding contribution agreements) among and between various levels of government to meet changing constituency expectations of access and service.

According to experts, this approach is also often adopted in response to political concerns (often raised initially by unsuccessful vendors) with respect to the perceived fairness of the process.

In terms of best practices, the fairness commissioner should not be seen as an advisor only to the officials responsible for the procurement. It was emphasized by experts that this individual should have an independent oversight role and capacity to ensure that disagreements with the officials managing the procurement on the government side are brought to the attention of and resolved by appropriate senior management.

Particularly for complex projects, fairness commissioners are usually independent, external third parties, typically in the form of consultants. As noted earlier, internal staff can be used, particularly for smaller, less complex projects. However, experts caution that it is important to ensure that the internal person has both objectivity and independence from the procurement decision-makers. In the absence of this independence, their advice can be more easily disregarded by the procurement process manager. This independence can be achieved by ensuring that the internal fairness commissioner reports higher in the organization (for the purposes of the specific procurement project) than the senior official overseeing the process.

Furthermore, the role does not have to be limited just to the actual period from when a request document is released until a recommendation for award goes forward. Fairness commissioners are often engaged much earlier on in the process, particularly with respect to larger and more complex undertakings. Generally, this would be after the business case has been developed and approved but before the procurement methodology has been finalized and more formal pre-release discussions with the private sector commenced.

During this phase, the buying organization would look to the fairness commissioner for oversight of the process of developing the bid request, including ensuring fairness, openness, and transparency in the development of the specifications/draft request document. This would include the relative

fairness of different procurement methodologies, evaluation tools and assessment techniques, potential lessons from other jurisdictions, etc.

13. Best and Final Offer

As indicated in the literature and by experts, request documents are rarely perfect. Examples of issues include where:

- Request documents are too rigid to allow for creativity or innovation from vendors.
- Ambiguous specifications provide too much latitude for vendor responses.
- Specifications did not take into account the range of different products or services that might be available.
- The bid request document was not clear in some areas or misinterpreted by the vendor.
- The purchasing organization underestimated the cost and complexity of the undertaking, or over-scheduled part of the implementation, etc.
- All proposed costs were considered too high or not competitive, or exceeded project funding and the suppliers are asked to revise/reduce their proposed price.
- It is anticipated that an additional round of bid improvement would be required to ensure technical compliance in the desired price range.

As presented in other sections of this report, much of the discussion of technique in procurement is focused on tools that are intended to minimize these kinds of problems – pre-release consultation with vendors, requests for information, request for vendor comments on draft request documents, etc. Yet, problems continue to arise that often cannot be addressed within the constraints of traditional *one-shot* procurement policies. The impact on value-for-money can be significant, with purchasing organizations being left to select from less than ideal proposals or cancelling the process.

From the research, expert opinion, and practice in other jurisdictions, it is apparent that the Best and Final Offer (BAFO) methodology has emerged as a best practice designed to mitigate the risk associated with traditional *one-shot* processes.

BAFO is essentially a two-stage procurement process, with the focus in the second stage on either the top evaluated bidder or a short list of the top bidders. It provides an opportunity for short-listed suppliers to improve the quality of their proposals in specific identified areas, particularly but not limited to price/cost. Under BAFO, the top-rated bidder or bidders are asked for revised proposals in the specified areas, which then become their best and final offer and the basis for additional evaluation and selection. Any information received in response to the first request document is not disclosed to other bidders as part of the BAFO procurement process.

Responding with a BAFO is usually voluntary. There is typically no requirement that a BAFO response be submitted. If a vendor chooses not to submit a BAFO, their original bid response stands for the purposes of the final round of evaluation. Submission is generally treated with the same rigour as the initial bid response – sealed BAFOs being submitted at a specific time, date, and location and in a specified format. Normal policies for written notification of bidders, late filing, errors, etc. would apply. Only the sections of the bidder's submission that have been revised in their BAFO are re-evaluated. If at that stage, the procurement manager thinks that further improvements either in technical requirements or price can be made, some jurisdictions allow for a second round of BAFO.

BAFO is currently used extensively in the U.S. at the federal and state level as well as in many municipalities for large and small/simple and complex procurements. While there is some awareness of the approach in Canada, this

appears to be limited. Experts interviewed for this project were not aware of any Canadian public sector jurisdictions that have adopted this option.

Most U.S. jurisdictions view it as very useful vehicle for ensuring the best possible technical solutions at the lowest prices and for avoiding unnecessary competition cancellations. According to the State of New Mexico:

“The best and final offer step has produced some truly amazing results over the years saving the State literally millions of dollars. The step works best on single source awards. However, it is valuable for every procurement as it is the only step in the process where the offeror is given an opportunity to amend the proposal.”

The following policy description of BAFO is taken from the State of Massachusetts’ Procurement Policies and Procedures Handbook:

“At any time after submission of Responses and prior to the final selection of Bidders for Contract negotiation or execution, a Procuring Department shall have the option to provide Bidders with an opportunity to provide a Best and Final Offer and may limit the number of Bidders selected for this option.

A Procurement Management Team may provide bidders with an opportunity to provide a Best and Final Offer (BAFO). The BAFO process represents an optional step in the bidder selection process and is not part of the contract negotiation process. BAFOs may be useful when no single response addresses all the specifications, when the costs submitted by all bidders are too high, when two or more bidders are virtually tied after the evaluation process or when all bidders submitted responses that are unclear or deficient in one or more areas.

The PMT may restrict the number of bidders invited to submit a BAFO, or may offer the option to all bidders. In either case, the PMT should provide

the same information and the same submission requirements to all bidders chosen to submit a BAFO. Departments are required to develop and distribute to selected bidders the written terms for a BAFO with specific information on what is being requested, submission requirements with timelines and information on the basis for evaluating responses and determining the successful bidder(s). Bidders may be asked to reduce costs or provide additional clarification to specific sections of the RFR.

Selected bidders are not required to submit a BAFO and may submit a written response notifying the PMT that their response remains as originally submitted. The terms of the BAFO may not identify either the current rank of any of the bidders selected for a BAFO or the lowest costs currently proposed. The Procurement Team Leader will have full discretion to accept or reject any information submitted in a BAFO. OSD recommends that departments consider how the BAFO option will be evaluated. Departments may evaluate the submissions of BAFOs as an addition to the scores already received by bidders on their original RFR responses or may develop a new evaluation process based entirely on the BAFO submission. Departments should articulate in the evaluation criteria the process to be used in evaluating the BAFO.”

The following is a description of an actual BAFO policy being applied, taken from the State of New Mexico's Procurement Guide:

“Several years ago four proposals were received in response to a professional services RFP. All four were responsive and the point spread ranged from a high of 850 points to a low of 655 points. With only 100 points remaining for the oral presentation, the Evaluation Committee was in a quandary regarding the selection of finalists. After considerable deliberation, it was decided that all four offerors would be selected. That decision produced the following results. The highest-ranked proposal that was leading by 50 points finished a poor third. As it turned out, the offeror

had highly-qualified proposal writers on its staff who were far more competent than the professionals proposed for the project. The proposal document was excellent, but the staff to perform the work was not knowledgeable in the application. They were weak technically as well. The offeror who was ranked second submitted an aggressive best and final offer and ended up winning the contract by a narrow margin over the fourth ranked proposal. The fourth ranked offeror had very knowledgeable staff who were involved in a critical phase of another engagement and were unavailable when the proposal was written. The proposed project staff had a significant level of application expertise and outstanding technical skills. The third ranked offeror did not submit a best and final offer and ended up in fourth place.”

In terms of weaknesses, a potential criticism of the BAFO process is that it may result in vendors not submitting their best price in their initial bid. However, as demonstrated in U.S. jurisdictions, vendors have no guarantee that they will be asked to participate in a BAFO process (i.e. the process may be open only to the top bidder or top few bidders) or even that a BAFO opportunity will be offered at all.

The primary suggested strength is that this approach provides a way around the problem of rigid RFPs that give the vendor and the purchaser additional opportunities to “get it right” and to get the best value for taxpayers. Having said this, experts caution that a BAFO process should not be an opportunity for the purchasing organization to revise its specifications or have bidders respond to new or changed requirements.

Part 3

Conclusion

As stated at the outset of this paper, procurement in the public sector is an inherently risky undertaking. The purpose of this paper has been to provide an overview of the most common risk areas associated with public sector procurement as reported in the literature, the experience and practice of selected jurisdictions, and in the opinion of experts.

The results of this review point to a relatively well-defined set of risks that are commonly recognized in the literature, by experts, and in the policies and practices of various jurisdictions. These risks are generally the same across jurisdictions regardless of size, level (municipal, provincial/state, and federal), or country – Canada, the U.S., the U.K., Australia, etc.

In addition, there is a considerable body of best practices information available. This includes training and certification programs and research on procurement best practices through various procurement professional associations. It also includes extensive examples of best practice handbooks, interpretive guides, evaluation frameworks, checklists, and many other types of more specific tools and techniques that are readily available from various jurisdictions, particularly those that see the value of and have a demonstrated commitment to transparency and access to information.

The key themes that would distinguish a best practice or leading jurisdiction are not particularly complex. In many respects, they mirror the more generic aspects of excellence in public sector management, including:

- A strong commitment to ethics, integrity, and professionalism in public service.
- A careful approach to identifying and managing risks.
- A strong commitment to training and development.
- Clearly articulated policies and procedures with an emphasis on practical, useful guidance to staff.
- Clearly articulated roles and responsibilities between and among administrative officials as well as between administrative and elected officials.
- Trust and confidence by elected officials in the professional capacity of administrative staff, backed up by robust and appropriate accountability mechanisms and a well managed administrative-political interface.

Most importantly – and again, consistent with the essential components of excellence in public sector management – appears to be the recognition in leading jurisdictions that maximizing risk mitigation in procurement requires a significant degree of investment of financial resources and senior management time and attention. This includes investment in training people, in taking the time to develop comprehensive policy guidance materials for staff, in researching and remaining current on best practices, and in communicating to the public and vendor community.

Appendix A
Purchasing Management Association of Canada
Code of Ethics

Appendix B

Examples of Single Point of Contact Policies

The City of San Antonio's 2003 report of the Mayor's Committee on Integrity and Trust in Local government recommended a prohibition on lobbying city officials during the RFP evaluation process, noting in its introduction that "The degree of public anger and the current cost of the erosion of public trust and confidence in city government should not be underestimated."

Dade County, Florida has a highly developed policy in this regard, known as the "Cone of Silence". It too was proposed as part of task force report, the purpose of which as suggested by the local media was "largely as a means of getting the commission out of the procurement process, expanding the cone of silence on procurement matters so that the mayor, commissioners and their staff are forbidden from communicating with the manager's staff."

"The Cone of Silence prohibits certain oral communications regarding a particular RFP, RFQ or bid during the period the Cone is in effect. The Cone of Silence commences after advertisement of the RFP, RFQ or bid solicitation. Any oral communication regarding a particular RFP, RFQ or bid is prohibited between:

- A potential vendor, service provider, bidder, lobbyist or consultant and the County's professional staff. The professional staff includes, but is not limited to, the County Manager and his or her staff.*
- A potential vendor, service provider, bidder, lobbyist or consultant and the Mayor, County Commissioners, or their respective staffs.*

- *The Mayor, County Commissioners, or their respective staffs and any member of the County's professional staff, including but not limited to, the County Manager and his or her staff.*
- *A potential vendor, service provider, bidder, lobbyist or consultant and any member of the respective selection committee.*
- *The Mayor, County Commissioners, or their respective staffs and any member of the respective selection committee.*
- *Any member of the County's professional staff and any member of the respective selection committee.”*

Other examples include:

Broward County, Florida

- *‘Cone of Silence means a prohibition on any communication regarding a particular Request for Proposals (RFP), Request for Letters of Interest (RLI), bid, or other competitive solicitation between:*
 - *Any person who seeks an award therefrom, including a potential vendor or vendor's representative, and*
 - *Any County Commissioner [elected official] or the Commissioner's staff, the County Administrator, Deputy and Assistants to the County Administrator, and their respective support staff, or any person appointed by the County Commission to evaluate or recommend selection in such procurement process.”*

Orange County Florida

- *“Black-out period is the period from issuance of a solicitation (IFB, RFP, RFI, or RFQ) until the Board selects successful bidder or proposer. During black-out period no lobbyist, principal or other person*

may lobby on behalf of a competing party for a particular procurement matter, including any member of the Board or any County employee assigned to the Procurement Committee.”

Los Angeles County Metropolitan Transportation Authority (LACMTA)

- *Commencing with the issuance of an RFP, RFIQ or IFB and ending on the date the staff recommendation for award is made public, no lobbyist representing a person or entity submitting a proposal in response to the RFP, RFIQ or IFB shall contact by any means or engage in any discussion concerning the award of the contract with any Board Member/Alternate or his/her staff, or any MTA staff. Any such contact shall be grounds for the disqualification of the proposer.*
- *During price negotiations of non-low bid contracts, lobbyists shall not contact, lobby or otherwise attempt to influence MTA staff, other than negotiation team members, or Board Members/Alternates and their staff, relative to any aspect of the contract under negotiation. This provision shall apply from the time of award until the recommendation for execution of the contract is made public. Any concerns relative to any contract under negotiation shall be communicated only to the CEO for resolution.*
- *A lobbyist representing a person or entity who submitted a proposal or bid in response to the RFP, RFIQ, or IFB shall not contact a Board Member/Alternate or his/her staff regarding a protest submitted regarding the recommended contract award or any lawsuit or potential lawsuit regarding the recommended contract award or any issue relating to the underlying procurement.*

City of Phoenix Communication Protocol – a policy adopted for major projects:

- *“The City is committed to a fair and open competitive process that allows all interested parties to receive information about the procurement for the Project. This Communications Protocol is intended to maintain the integrity of the procurement process, to maximize the benefits of a fair and open competitive process and to set forth the guidelines for all permitted communications relating to the procurement.*
- *The Mayor and the City Council are committed to the procurement process as the means of ensuring that the selection of a contractor for the Project is completely based on a Proposal's merit.*
- *Respondents and Proposers are advised that no contacts permitted under this Section shall be made by telephone, other than to schedule a public meeting. In the event calls related to this Project are received by the Mayor, any City Council Member or their staff, [or senior administrative official] they will be directed to Michael Gritzuk, P.E., Water Services Director for proper response. All requests for meetings permitted under this Section shall be made to the Project Manager via letter, facsimile, E-mail or other written method and shall be made available to the public, press and all other Respondents and Proposers.*
- *If a Respondent or Proposer, including any of its representatives, violates this Communication Protocol with elected officials with*

respect to the Project, after the City's announcement for the submittal of qualification statements, the City reserves the right to reject the Respondent or Proposer.”

Appendix C

Fairness Commission Role Description



PARTNERING AND PROCUREMENT INC.

PPI Fairness Commissioner Services

Background

Openness, fairness and transparency is a contemporary issue in public sector procurement management emerging from:

- renewed and updated public service ethos (modern comptrollership, accountability, public-public and public-private partnering, user-focused service delivery, etc.);
- openness, fairness and transparency as an axiom of public service;
- increasingly complex procurement requirements for both products and services;
- the increasing level of private sector participation in government service delivery (devolution and flexible delivery of service);
- increased competition and scrutiny (i.e. increased number of players – local, national and international based) in pursuit of business opportunities arising from new forms of public sector service delivery and increasingly complex bidding processes (e.g. Common Purpose Procurement, Benefits-Based Procurement, Common Business Solutions, Public-Private Partnering-P3);
- an increased level of open discussion and dialogue among vendors (e.g. through trade associations such as ITAC), about their experience in public procurement processes;

- the increased willingness of the supplier community to challenge both process and decisions – vendors are very aware of legal precedent and avenues open for political, administrative or judicial review;
- public employees/managers having limited experience in managing complex procurement initiatives;
- increasing concerns about the high costs to industry in responding to RFIs / RFQs / RFPs;
- increased political sensitivities resulting from:
 - the scale and complexity of projects;
 - commitment to multi-year contracts;
 - HR considerations and impacts;
 - vendor community challenges;
 - special interest group challenges; and
 - the scrutiny of public review in the context of value for money auditing.

These developments have led to:

- an increasing requirement for specialized knowledge of procurement management practices on larger scale and/or complex procurement initiatives;
- recent common law decisions that are setting new precedents for ongoing procurement management practices;
- the development of quasi-judicial bodies (e.g. the Canadian International Trade Tribunal - CITT) to investigate and arbitrate or rule on challenges to public procurement undertakings;
- new statutory and regulatory directions requiring reform of administrative practice / procedures and standards as part of new accountability frameworks; and
- the development of new methods and techniques for evaluation and selection processes

The PPI Fairness Commissioner Role

Partnering and Procurement Inc.'s Fairness Commissioner services encompasses a wide range of activities, depending on the stage of engagement and complexity of a procurement initiative. This may include:

- verification of any statutory, regulatory, internal policies and procedures/management directives, and administrative rules and conditions governing both the procurement framework and procurement practices;
 - verification of the authority, roles, responsibilities and function of the designated procurement management team;
 - training / orientation for the procurement management team, e.g.
 - details of the bidding process;
 - “the rules of the game”;
 - Code of Conduct for team members;
 - evaluation and selection processes;
 - ensuring broad and appropriate publication of requirements to the vendor community (i.e. availability to all interested parties in a consistent and timely manner through a readily accessible medium at no or reasonable cost); and
 - verification that there is an adequate exit strategy identified in the RFP process to make meaningful re-competition possible.
-
- **Oversight of the solicitation, evaluation and assessment process**

This process includes:

 - ensuring sufficiency, relevance, completeness and accuracy of formal documentation including the review of RFI / RFQ / RFP documents (including any Appendices related to proposed contract award processes, particularly extended-term options or ensuring consistency

between the bid conditions expressed in the RFP and the proposed contracting terms and conditions);

- ensuring that any contact between procurement and evaluation personnel and prospective proponents is kept on a formal basis and maintained within the rules of established procurement practice;
- ensuring adequate communications and timely disclosure to proponents (e.g. changes in information or requirements);
- the review of salient characteristics of stated requirements to ensure fairness – i.e. avoiding prescriptive requirements that only a named brand or exact duplicate could meet, thereby restricting competition and having the effect of exclusivity;
- the review of significant definitions for clarity and completeness;
- the identification of any material exceptions;
- attendance and monitoring at vendor briefing sessions;
- objectivity review of qualitative evaluation criteria, scoring methodologies and assessment tools;
- the review of the method of weighting assigned to various elements of evaluation criteria
- the Review of methods of assessing price vs. qualitative evaluation criteria;
- ensuring that all criteria for evaluation proposals are set out in RFP documentation;
- attendance at and monitoring of evaluation meetings, e.g.:
 - to ensure that all proposals are evaluated strictly in accordance with published criteria;
 - verification of non-compliant bids / proposals; or
 - ensuring that evaluations are undertaken by more than one evaluator to confirm freedom from bias, etc.;
- attendance at debriefing sessions to:
 - note and flag anomalies;

- identify and verify analysis, written determination and justification for any brand-specific requirements;
- provide periodic / milestone-based written reports (which may include notices of warning and caution);
- ensuring protection of confidential information (to avoid unfair advantage that might arise from its publication). e.g.:
 - bids and proposals;
 - trade secrets;
 - commercial or financial information;
 - scientific or technical information; and/or
 - evaluations.
- ensuring that information that may be deemed to be confidential is clearly identified and that all stakeholder representatives or procurement management team members understand their role and responsibility in maintaining such confidentiality, from concept through to project implementation.

Conflict of Interest Issues

Conflict of interest considerations are a primary element in ensuring openness and transparency. In this context, the role of the Fairness Commissioner would include:

- the review of Conflict of Interest Guidelines for stakeholders/owners/managers/incumbent suppliers and their subsequent distribution or publication;
- an assessment of disclosure in the public interest where required (e.g. disclosure of consultation with relevant third parties);
- the identification and resolution of Conflicts of Interest (e.g. among team members, evaluators, key stakeholder representatives, et al); and

- the review of disclosure requirements for proponents and/or incumbents.

High-Level “Monitoring” Considerations

The Fairness Commissioner provides a high-level monitoring role, e.g.:

- the identification of policy, financial and/or technical issues that may not have been readily apparent to the project implementation team at the start of the project;
- synthesizing and/or rationalizing any emerging issues that could have a significant impact on the conduct of both the procurement and the contracting process; and/or
- ensuring that the full range of policy, administrative and operational issues are:
 - appropriately addressed in the formalization of the RFP and consistent with proposed services contracts; and
 - articulated in a manner that defines and sustains public policy interests.

Advisory Considerations

The Fairness Commissioner provides advice to senior management or executive on procurement strategy. This could include activities such as:

- advice and support on the delineation of fundamental policy and operational considerations to be incorporated in the RFP development process which would include:
 - reviewing any emerging dependencies among various operating scenarios;
 - identification and management of public sector risk considerations associated with the use of third party suppliers or contractors;

- reviewing evaluation approaches and primary selection methodologies;
- reviewing primary transition issues to be addressed in the RFP (e.g. service continuity and on-going relationship management with selected partners);
- developing consensus and/or a common understanding of issues among the RFP Working Group, e.g.
 - an acceptable range of contractual and financial relationships for embodiment in a formal RFP process; and/or
 - the “most-likely” RFP development timelines and subsequent implementation; etc.;
- advice on setting adequate and reasonable time for interested proponents to prepare and submit proposals (which may include time to initiate and complete any necessary qualification procedures);
- advice on the particular needs of complex, high-value or sensitive procurement initiatives in terms of staged procedures such as Requests for Information (RFI), Request for Expressions of Interest (RFEI) or vendor pre-qualification processes;
- advice on the requirements and procedures for pre-qualification of vendors;
- advice on avoiding unnecessary costs for both the buyer and suppliers;
- advice on openness, fairness and transparency in moving to a second-place proponent where agreement cannot be reached with a first-place proponent; and
- advice on resolving any complaints about the procurement process or any alleged breaches of procurement laws, regulations, policies or administrative procedures

In a further support role, the Fairness Commissioner can:

- assist the RFP/RFI/RFQ Working Group in the preparation of related submissions and presentations to senior management on the resources,

business processes and organizational requirements to move the initiative forward in a timely and effective manner; and

- assess and make recommendations to senior management relative to emerging procurement management considerations that may have an impact on implementation schedules

Monitoring contract negotiations

At the contract negotiation stage, the Fairness Commissioner would be engaged to:

- ensure that contract negotiation is conducted in a structured and ethical manner by trained and experienced contract negotiators; and
- ensure that the terms and conditions of the irrevocable tender set out in the solicitation documents (i.e. Contract A) is consistent with the terms and conditions of the acceptance proposed by the supplier (i.e. Contract B).

A focus on outcomes

In PPI's approach the focus on outcomes is maintained throughout the engagement. This includes:

- ensuring that sensitivity to the interests of a wide community of stakeholders is maintained;
- ensuring that the process can withstand scrutiny from auditors, political leaders, the press and the public, i.e. fairness, objectivity, impartiality, clarity, and openness and transparency has been maintained;
- ensuring that the initiative results in the creation of a mutually beneficial service relationship between the public and private sector where responsibilities, risks and rewards are appropriately allocated;
- ensuring that government and private sector interests in terms of accountability to citizens and shareholders / meeting citizen expectations

about stewardship of public sector resources and services are aligned;
and

- ensuring that public policy interests are sustained throughout the full life cycle of the services delivery arrangement.