

Standing Committee on Government Operations and Estimates

OGGO • NUMBER 007 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, September 29, 2011

Chair

Mr. Pat Martin

Standing Committee on Government Operations and Estimates

Thursday, September 29, 2011

● (1530)

[English]

The Chair (Mr. Pat Martin (Winnipeg Centre, NDP)): I call the meeting to order.

I'd like to welcome everyone to the 7th meeting of the Standing Committee on Government Operations and Estimates in this 41st Parliament.

Today our orders of the day are witnesses from the Office of the Procurement Ombudsman. We have Mr. Frank Brunetta, the procurement ombudsman. With him is Janet Barrington, the principal for quality assurance and risk management. Welcome.

We have also Janet Labelle, principal for procurement inquiries and investigations. Welcome to you as well, Janet.

Will you have Mr. Paul Morse with you today as a witness?

Mr. Frank Brunetta (Procurement Ombudsman, Office of the Procurement Ombudsman): I believe he is detained. I expect him to be here. He may be a little late.

The Chair: Very good. Thank you.

We would welcome opening remarks from you, Mr. Brunetta, and then you'll be available for questions from our colleagues on the committee.

[Translation]

Mr. Frank Brunetta: Thank you, Mr. Chair.

Thank you, honourable members for this invitation. I welcome the opportunity to discuss with you the content of the Office of the Procurement Ombudsman's 2010-2011 Annual Report.

[English]

Since being appointed in January 2011, I have benefited from the work undertaken by my predecessor, Mr. Shahid Minto, in establishing the office. Mr. Minto retired in July 2010, and the deputy procurement ombudsman oversaw the operations until my arrival.

From the time of my arrival, it has been evident that the office is made up of quality people who believe that what they are doing makes a difference to the fairness, openness, and transparency of federal procurement, and ultimately to the Canadian taxpayer. I am proud to have been chosen to lead this valued and trusted organization.

Here with me today are Janet Barrington, the director of quality assurance and risk management; Janet Labelle, director of inquiries and investigations; and Mr. Paul Morse, director of practices review.

My remarks today, Mr. Chairman, will focus on three areas covered in my report. I'll provide an overview of the office's mandate and its services. I'll provide a brief overview of the 2010-11 results achieved by the office. Then I'll give the committee a sense of where I plan on taking the office.

Let me begin with a brief overview of my office's mandate and the services we provide.

In 2006 the government enacted the Federal Accountability Act, providing, among other things, the appointment of a procurement ombudsman. The office was created through an amendment to the Department of Public Works and Government Services Act, and became fully operational in May 2008 with the coming into force of the procurement ombudsman regulations.

We have a government-wide mandate covering most departments and agencies. The three main exceptions to this government-wide mandate are the Canadian Security Intelligence Service, the staff of the House of Commons and Senate, and crown corporations.

Our mandate, as set out in legislation, is to do the four following things: review any complaints respecting the award of a contract for the acquisition of goods below the value of \$25,000 and services below the value of \$100,000; review any complaint respecting the administration of a contract for the acquisition of material or services regardless of that dollar value; ensure that an alternative dispute resolution process is provided if both parties agree to participate; and review the practices of departments for acquiring material and services to assess their fairness, openness, and transparency.

In addition, I am required to perform any duty respecting the practices of departments for acquiring material and services assigned to me by the Minister of Public Works and Government Services or Governor in Council.

My position reports to the Minister of Public Works and Government Services. The office's enabling legislation requires that I submit an annual report to the minister, who in turn tables the report in Parliament.

The office has approximately 25 full-time positions, with a budget of roughly \$4 million. Although the office receives its funding through a Public Works and Government Services appropriation, it is approved by the Treasury Board, and only the Treasury Board can alter this appropriation.

The office is independent and operates at arm's length from federal departments and agencies. I have full control over the execution of our mandate and our day-to-day operations.

Prior to the creation of the office, the procurement system was limited in providing a recourse mechanism for suppliers dealing with issues related to the award of low-dollar-value contracts and contract administration issues.

While suppliers with issues related to the award of large-dollarvalue contracts could go to the Canadian International Trade Tribunal, suppliers with issues concerning low-dollar-value contracts or contract administration issues had three choices, none of them very practical. They could attempt to have the issues addressed by the department they were dealing with, they could simply accept the issue, or they could take legal action. In creating the office, the government addressed a need for these low-dollar-supplier contracts.

Let me now move to the results of the office for the 2010-11 fiscal year. Following the retirement of the inaugural ombudsman, the office was without an ombudsman for approximately six months. The regulations prohibit the office from launching new investigations and reviews without an ombudsman; however, the day-to-day business of the office continued.

Our inquiries and investigations team is our day-to-day interface with our stakeholders. The team responds to calls and e-mails from the supplier and procurement communities.

(1535)

I regard this area as a critical aspect of my office. Accordingly, we have implemented a "service first" business model, ensuring that each contact with the office receives prompt, personalized, and seamless service. Our primary objective when dealing with suppliers is to address their concerns through dialogue and information sharing before the issue escalates into a lengthy or expensive dispute.

We are also mindful of our responsibility to provide service to Canadians, and we are diligent in ensuring that issues, even those that do not fall within our mandate, are brought to the attention of the appropriate office. In executing the office's mandate, we are careful to be neither a lobbyist for a supplier nor an apologist for the federal departments.

For the period covered by our annual report, the office was contacted 329 times. Of these contacts, 110 were actual procurement-related complaints. Of the 110 complaints received by my office, 81, or 74%, were with regard to the award of a contract. The issues being raised by suppliers in this area focused mainly on the clarity in the statements of work that define requirements, the level of restrictiveness in bid evaluation criteria, and fairness in the process of evaluating bids.

Twenty-three of the 110, or 21%, of the complaints received by my office had to do with the administration of contracts. In this category suppliers typically raised concerns about late payments and about departments verbally altering contract terms and conditions after the work had begun. The remaining six, or 5%, were direct requests for practice reviews or alternative dispute resolution.

The breakdown that I provided and the types of concerns that I've outlined are fairly consistent with what the office has heard in

previous years. I should mention that all complaints that met the regulatory parameters of the office were actioned.

We released three investigative reports, two carried over from 2009-10 and one that originated in 2010-11. All three complaints that led to investigations concerned the award of contracts. The office also provides alternative dispute resolution services when they are requested and all parties to the contract agree to participate. The office provides an opportunity for the parties to come together in an unbiased setting to discuss their contractual dispute. Our objective here is for the parties to reach a mutually agreeable settlement.

In 2010-11 we received 10 ADR requests. Two did not meet the requirements under our regulations. Of the remaining eight, four were declined by the departments involved, when one of the departments was pursuing its own internal dispute resolution process. Three were successfully resolved by the office and one case that was ongoing has been resolved by the office since the tabling of the annual report.

The office also conducts reviews of practices of departments requiring material and services to assess their fairness, openness, and transparency. Our reviews follow a similar methodology as performance audits, using a systemic evidence-based approach. Last year we launched four procurement practice reviews. One of these reviews was recently published and the other three are in various stages of completion.

All of the office's practice review reports are made public and available on our website.

Last year we also published a risk-based study on directed contracts under \$25,000. This study was initiated in part because of comments and concerns about these contracts raised to my predecessor by this committee.

Based on the office's work in 2010-11, we noted that while departments have made strides to assist the supplier community in doing business with government, calls received by my office from suppliers suggest that more can be done. Many calls received by the office are from suppliers who are unclear about how to do business with the federal government. Likewise, we are hearing from suppliers who are confused by the government's solicitation bidding process, who have difficulty understanding solicitation documents, or who are unclear on how to submit responsive proposals for inclusion in procurement vehicles such as standing offers and supply arrangements.

What appears to be frustrating suppliers is their difficulty in obtaining information or clarification from government procurement officials. A large number of cases that come to our attention involve concerns that could have been avoided through open and clear dialogue.

We have had some cases where suppliers have been reluctant to disclose the names of departments with which they have procurement concerns, for fear of being excluded from future business opportunities. I am doing some follow-up work on these cases and hope to have a better understanding of this issue in the coming weeks.

With respect to moving forward with the office, it is my view that evolving the office from the basic start-up mode, which it has been in, to optimum operation and delivery will be essential if the office is to realize its mission in promoting fairness, openness, and transparency in federal procurement.

(1540)

Instrumental in our evolution will be the implementation of the office's recently completed strategic plan. The strategic plan clearly lays out that our work will be guided by three strategic drivers: to educate, to facilitate wherever possible, and to investigate when authorized to do so.

In addition, I have initiated other activities to better position the office. For example, it's my view that the office can only be effective if it is in tune with the community it was created to serve. Accordingly, we have developed and are in the process of executing a concerted outreach program.

Also, a formative evaluation of the office's first three years of operation is being initiated. This evaluation will provide information to better understand how well the office is executing its responsibilities and to make the necessary adjustments to the nature of our work and organization.

The overarching objective in undertaking this work is to structure and equip the office to meet the expectations and fulfill the mandate envisioned by parliamentarians when the office began operating in 2008

Thank you for the invitation to speak to you today.

[Translation]

Thank you very much.

[English]

We welcome any questions the committee might have at this time.

The Chair: Thank you, Mr. Brunetta, for that report.

Our first questioner will be from the official opposition, Alexandre Boulerice.

[Translation]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Good afternoon, Mr. Brunetta. I'd like to thank you for your presentation and for being here today.

First, I would like to understand the rationale and the arguments supporting the rule that says that you can only review contracts for goods below the value of \$25,000 and contracts for services below the value of \$100,000.

Why was this rule established? What vision or what rationale does it relate to?

Mr. Frank Brunetta: Thank you for your question.

[English]

As I mentioned in my opening statement, prior to the creation of my office, the suppliers of large-dollar-value contracts had a venue for their complaints in the CITT. But the government recognized that there was a gap with regard to suppliers of low-dollar-value contracts. If you were a supplier to government providing goods for under \$25,000 or services under \$100,000, the CITT was not available to you.

As I mentioned, these individuals essentially had three choices: they could swallow hard and just accept the fact that there was an issue, they could try to take it up with the department they were dealing with, or they could take costly legal action. And for a small or medium-sized enterprise, legal action erodes the bottom line and is not very practical. So the office was created to fill that gap.

[Translation]

Mr. Alexandre Boulerice: Thank you.

So are you able to do all the work you have to? You're reviewing 325,000 contracts a year, worth \$20 billion. It's astonishing; it's absolutely enormous.

Based on your estimates and assessments, since you oversee all of that, what is the percentage of the contracts awarded to suppliers that are awarded after a call for tender? We think this is an interesting mechanism because it ensures the best product for the best price.

Is this a systematic practice for this type of contract for goods and services? Is it used in the majority of cases or in the minority of cases?

● (1545)

[English]

Mr. Frank Brunetta: I will have to refer to my colleague Janet Barrington for the answer. Janet was the author of the under-\$25,000 study. I don't have that number handy, but perhaps Janet, having done the study, would.

Janet, can you answer?

Ms. Janet Barrington (Principal, Quality Assurance and Risk Management, Office of the Procurement Ombudsman): Yes, and thank you for the question.

Roughly 90% or more of contracts per year are under the \$25,000 threshold for competition. That number has been consistent over the last 10 years. In the review we conducted looking into directed contracts under \$25,000, we found that in 2008 approximately 60% of those contracts—60% of the 90%—were not competed for.

Mr. Alexandre Boulerice: They were not.

Ms. Janet Barrington: They were not.

[Translation]

Mr. Alexandre Boulerice: Do you think this practice should be encouraged to improve transparency and fairness among the various suppliers? Is there something that should be in place to promote this type of competition among suppliers?

[English]

Mr. Frank Brunetta: I should say that the government contracting regulations require competition. The \$25,000 threshold has been put in place because I believe it's considered to be a low-dollar value, and it's not always practical or economical to run a competition for low-dollar contracts.

[Translation]

Mr. Alexandre Boulerice: Still, \$20 billion is a lot of money.

Do you think that the rules of the \$25,000 and \$100,000 limit should be changed? Should the scope of your supervision be extended?

Mr. Frank Brunetta: I'm sorry, but I'm not sure I understood. Are you talking about changing the mandate of the office or changing the limit?

Mr. Alexandre Boulerice: The limit.

[English]

Mr. Frank Brunetta: Quite frankly, having been in this office for nine months, it's premature for me to speculate on whether that limit should be changed. I haven't seen any evidence to suggest there's an issue. The volume seems to tell a story, but I don't have the evidence or the background to say it's an inappropriate limit.

[Translation]

Mr. Alexandre Boulerice: Thank you.

[English]

The Chair: Next we have Jacques Gourde for the Conservative Party, please.

[Translation]

Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC): Thank you, Mr. Chair.

I would also like to thank the witnesses for being here and for the information they are providing.

I am pleased to point out that our government implemented the Federal Accountability Act to make the government transparent. We are also constantly looking for ways to improve it. In fact, it's our government that established the procurement ombudsman in 2006 to strengthen the confidence of Canadians in the procurement process, which binds the government to promoting fairness.

Mr. Brunetta, to what extend do you think the procurement ombudsman has contributed to improving the federal government's procurement process to make it more open, fair and transparent?

Mr. Frank Brunetta: Thank you for your question.

[English]

As I just mentioned in my previous response, I think it's still early days for the office. The office has been in place for three years, so "to what extent" is difficult to gauge at this stage.

I will say that it is the first time that a dedicated body has been in place to look at the procurement issues. Prior to the creation of the office, there was no dedicated body looking at issues arising from the supplier community. There was the odd internal audit that may have looked at procurement, and the Auditor General occasionally touched on it, but there was no dedicated body such as this office

looking at procurement. I think that has helped to strengthen confidence.

The office provides a unique service, in that it helps review complaints. It supplies ADR services for the system and it reviews practice reviews. So from that perspective I believe it provides some assurance that someone in the system is monitoring what's going on, and I think it's a step in the right direction in strengthening confidence. Whether we can gauge that at this early stage is doubtful.

On that note, as I mentioned in my opening remarks, I have initiated a formative evaluation of the office to see in what areas we could further improve what we're doing and how we do it to strengthen that confidence.

(1550)

[Translation]

Mr. Jacques Gourde: Mr. Brunetta, could you please draw a parallel between the 1990s and the situation since 2005, with respect to the improvements made to the procurement process?

[English]

Mr. Frank Brunetta: I'd like to say that I'm too young to remember the 1990s—you tossed that one at me—but that's not true.

Yes, I think we've come a long way since the 1990s, especially in the area of transparency. I think the Internet has done wonders to open transparency. The measures that are now in place with proactive disclosure, the MERX postings, these are all very progressive steps.

I should mention that the office often hosts foreign delegations. These are very envious things that we're doing. We have foreign delegations that can't believe, when we take them through the web, that we can actually show people not only what contracts are being offered by federal departments, but also what contracts have been awarded. So I think, drawing a comparison from the 1990s, in transparency there's been a huge leap forward.

I believe the government has come a long way as well in making certain procurement vehicles available to make the process more efficient. For example, we now have mandatory standing offers and supply arrangements. These are efficiency tools that are in place that weren't in place in the 1990s. Again, the Office of the Procurement Ombudsman is a positive step that takes us forward from the 1990s.

I think there has been a lot of progress since the 1990s, definitely.

[Translation]

Mr. Jacques Gourde: Mr. Brunetta, before 2006, there was a really negative atmosphere in terms of awarding government contracts, which is why the government created the procurement ombudsman position. In all honesty, it was the sponsorship scandal that led to the creation of your office.

Since you have been in the position, has your office helped to strengthen the confidence of Canadians in the procurement process involving Canadian companies?

[English]

Mr. Frank Brunetta: As I mentioned in my earlier response, I believe it has. The degree to which it's strengthened, I can't say, and that's one of the reasons I'm undertaking the evaluation.

[Translation]

Mr. Jacques Gourde: Thank you very much.

[English]

The Chair: Thank you, Jacques.

Denis Blanchette.

[Translation]

Mr. Denis Blanchette (Louis-Hébert, NDP): Good afternoon, Mr. Brunetta, and welcome.

Your playing field, if I can call it that, includes some 325,000 contracts for which you have received 110 complaints, which isn't a lot.

What do you think? Could we say that, generally speaking, public service employees are awarding contracts properly?

Mr. Frank Brunetta: Thank you for the question.

[English]

To make one slight correction, while there are roughly 300,000 to 350,000 contracts let by government every year, I do not see oversee that volume. The mandate of the office is such that I can investigate only once I receive a formal complaint. The mandate is fairly prescriptive as outlined in the regulations.

The question you were asking was whether the process is fair and equitable...? I'm sorry.

• (1555)

[Translation]

Mr. Denis Blanchette: In your opinion, following not just the processing of complaints, but also the reviews that you do, do you think that contracts are awarded properly in most cases?

[English]

Mr. Frank Brunetta: I'll use the context you provided. There are roughly 300,000 to 350,000 contracts issued every year. When I look at the CITT numbers, I believe the CITT receives about 100 complaints in any given year. We receive 100 complaints. The numbers would suggest that the system is working. But when you look at that sort of volume, it would be naive to think that we wouldn't have issues here and there. Taking a step back and looking at it holistically, I believe the system is working. Certainly, there are issues. I'm not sitting here trying to tell you that there are not. On the whole, this is a big machine that's operating. Very few issues are surfacing to our office or to the CITT that would suggest otherwise.

When we look at some of the investigations we do, we step back every time an investigation is completed to try to assess what went wrong, to get out of the detailing and try to determine whether it's a systemic issue. In the vast majority of cases that we've looked at in the past year, at least since I've been there, it's been administrative errors and oversights, people trying to cut corners. I haven't seen to date, and I want to caution the committee that it's early for me, any

reason to suspect there's untoward activity or issues. It's administrative. I'll call them blunders.

[Translation]

Mr. Denis Blanchette: Also, based on your experience and on your colleagues' experience, how would you describe most of the problems you encounter.

Are they problems with perception as to how the federal government works? It's seen as quite big. Are they genuine problems? Or is it not a matter of education or information regarding access to these contracts?

Mr. Frank Brunetta: Thank you for your question.

[English]

I would characterize the issues in two categories.

The first is a category of...I'll call them new entrants to government contracts. The callers and the complaints we get are primarily around a lack of understanding of how things work. Small and medium enterprises trying to get their foot in the door are having difficulty. At times the way it's expressed is that it's overwhelming. They just don't understand how to do business. There's an opportunity to help those folks.

For the people who are already doing work for government, the second category, the issues that we're hearing about there are primarily around the administration of the contract. Once the contract is let and agreements are in place and the work begins, there are often verbal agreements to change the process. This is not untypical. Imagine doing work in your own home and you ask a contractor to remove a wall and then you realize there are three vents behind it you hadn't anticipated. It's very similar in the government process. You start a job expecting something and something new comes up. Quite frankly, the rules require you to sit down and do a formal change and to have the work stop. We have very diligent public servants who want the work to continue. There's a deadline. So there's a verbal agreement. People say yes, go ahead, make that change, and we'll deal with the paperwork later. It's inevitable that when that paperwork comes in there's something that hadn't been expected. That's when the dispute begins. That's where we get the call.

The second part of that equation is late payments. As I mentioned earlier we do get calls from suppliers to government who feel that they're not getting paid on time. Those would be the categories.

● (1600)

The Chair: We're well over time.

Thank you, Mr. Blanchette.

Mr. Trottier.

Mr. Bernard Trottier (Etobicoke—Lakeshore, CPC): Thank you for coming in today.

You mentioned 300,000 to 350,000 contracts per year and 110 complaints. That's not a lot. Obviously the process isn't perfect. You mentioned that of those complaints, a lot of those are because of the bid evaluation and selection process and the criteria not being visible. There's a difference when it comes to services versus goods procurement. I think, especially, that a lot of subjective criteria comes into play when you're looking at the capability of certain vendors to execute work.

Could you describe where you might have seen some issues with the selection criteria, how those were established, and some of the scoring of bidders—where you had to look at some subjective criteria to determine whether they were actually capable of doing the work? It's not just a question of awarding it to the lowest-cost bidder, if there's a strong sense that this bidder is not actually capable of executing the work that they say they are capable of doing.

Mr. Frank Brunetta: Are you asking for examples of subjective criteria?

Mr. Bernard Trottier: Is that a problem that was perceived in some of the complaints that you did investigate, that the bid evaluation and selection process was flawed and there was a need to take some corrective action and fix the process?

Mr. Frank Brunetta: Thank you for the question.

Yes, we do get complaints where there is a perception that the bid evaluation process was somehow skewed or inappropriate. But you have to understand that in a bidding process there are clear winners and clear losers, and the losers will always try to understand why they didn't win.

When we look at some of these complaints, I can't honestly say that the issues fall on one side or the other. In a lot of cases, the departments have done everything well and the evaluation criteria are clear. What they may have done better is communicate with the supplier. That is where a lot of our issues come up. The process is flawless, the documents are flawless, but for reasons unbeknownst to us there is a reluctance to debrief the bidder comprehensively, and that leads to a perception that things are not what they should be.

There are cases, and we've dealt with one recently, where we found the bid evaluation criteria to be subjective and we brought that to the attention of the department.

I believe in that case, Janet, we actually recommended compensation to the complainant because we felt he had been unfairly dealt with.

Mr. Bernard Trottier: I have a follow-up question.

When it comes to transparency and openness in procurement, are there any structural barriers that you see, especially in these \$100,000 service contracts, where certain competent bidders aren't being allowed to put bids forward because of some barriers? Might there be some criteria that the government establishes that has little to do with the actual ability to execute the work, a barrier that's been imposed on them and therefore fails to give opportunities to small and medium enterprises, service enterprises in particular?

Mr. Frank Brunetta: I'll have to turn to my colleagues to see whether we have examples of that.

Ms. Janet Labelle (Principal, Procurement Inquiries and Investigations, Office of the Procurement Ombudsman): Thank you for the question.

Actually, we did do an investigation last year that is reported in the annual report you have in front of you. In that particular instance there was a mandatory technical requirement for a certain level of professional designation. The issue was that the complainant felt there were other opportunities for him having a different type of professional designation.

We did the investigation and found that notwithstanding that it did not preclude him from bidding—because he didn't bid—the department agreed with our findings and has actually undertaken a study to see if perhaps they can add more accreditations and designations to open up this field.

Mr. Bernard Trottier: Related to that, when it comes to some interprovincial trade barriers that might exist, is there any evidence that there are certain government procurement practices that aren't allowing enterprises from across the country to bid on contracts?

I guess my experience relates more to services contracts where that kind of thing could be very mobile, but because of some trade barriers—it could be professional designations and other things—SMEs aren't able to bid on contracts that take place in other provinces.

● (1605)

Mr. Frank Brunetta: I don't believe we've done enough work to provide an adequate answer to that. This area is one that hasn't crossed our office yet.

The Chair: Mr. Trottier, that concludes your time.

If I might, I would ask for a point of clarification based on some of your answers, Mr. Brunetta, or perhaps actually Janet.

We were talking about 325,000 contracts roughly per year for the federal government valued at \$20 billion. You were saying that 90% of those are under \$25,000 and therefore would be within the realm of the office of the ombudsman for complaints.

Ms. Janet Barrington: Yes, that would be correct.

The Chair: So we understood that correctly. But I understand that roughly 60% of those are not tendered. Is that correct?

Ms. Janet Barrington: Yes, that's what we found in the study we carried out in 2008.

The Chair: Could you then tell us, if you know, what would be the total value of untendered contracts given out by the government per year? If the 325,000 equal \$20 billion, and 90% of those are under \$25,000, the remaining 10% may be very valuable. I'm only trying to get an idea of the dollar value of the total contracts that fall under the jurisdiction of this office.

Mr. Frank Brunetta: Mr. Chairman, perhaps we can get back to you with that. I don't know that we have that answer handy.

Ms. Janet Barrington: I don't have that readily available. I do know that the value is quite low. Out of the \$20 billion, the value of the under-\$25,000 contracts is quite low.

The Chair: I would suspect so.

Ms. Janet Barrington: I'm not sure I have the number handy.

The Chair: It's 90% of the contracts—

Ms. Janet Barrington: The number of contracts.

The Chair: —but a very small percentage of the \$20 billion figure. If you could get us a guesstimate and submit it to the committee, we'd be interested.

Mr. Frank Brunetta: Intuitively, Mr. Chairman, I would say that this is the case. The volume in the numbers is under 25; the materiality in the dollar would be in that 10%. That's where you have your military procurements and what have you. But we'll confirm that and get back to you.

The Chair: Thank you.

Because we have a vacancy today, we'll go right to the next Conservative questioner, Scott Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you, Mr. Brunetta, for your presentation today.

I have several questions. Is there any particular government department—you just mentioned Defence—that you've had a particular interest in reviewing or had a particular number of complaints about?

Mr. Frank Brunetta: That's a good question, Mr. Armstrong. It's a question that I asked the office. We have a case management system that allows us to log the number of complaints coming in and to collect other information. One of the things I wanted to know was whether there was a particular department that comes up more than others. Not surprisingly, it's Public Works, but it's not because they're a problematic department. This is the procurement arm of the government, and it only makes sense that most of the issues have to do with Public Works. After that, the data are really scattered. There isn't any particular department that jumps out.

Mr. Scott Armstrong: So we're not looking at any particular black holes or one department that's not doing very well.

Mr. Frank Brunetta: No.

Mr. Scott Armstrong: The complaints are coming in and are pretty much spread out equally.

Mr. Frank Brunetta: That's exactly the line of questioning I wanted to follow. I wanted to know whether there was a particular area in government that represented most of the calls. That would have given me evidence to do a practice review or follow something up with that department, but that line of questioning didn't materialize in anything significant.

Mr. Scott Armstrong: Good. Next week this committee is going to begin a study on the Office of Small and Medium Enterprises and a particular program in that office. How effectively do you believe this office facilitates and supports small and medium enterprises to get business with the federal government?

Mr. Frank Brunetta: I'm familiar with the OSME office, and I can't say that I can give you an answer on how well they do things. What I will tell you is that based on the calls we're receiving, there's a definite need for this type of office. As I mentioned earlier, new entrants into government business are finding it very difficult. A lot of the calls that we get are basic questions like how to get on MERX. A vast majority of those are forwarded to the OSME office. That's their role.

So how effective they are, I can't say. Is there a need for an office of that nature? Absolutely.

(1610)

Mr. Scott Armstrong: Are you familiar with a Canadian innovation and commercialization program?

Mr. Frank Brunetta: Unfortunately, I'm not, no.

Mr. Scott Armstrong: Okay, I'm going to move on then.

Could you give some examples of some of the best practices you've seen in procurement in the public service?

Mr. Frank Brunetta: Thank you for the question.

Yes, this is actually one of the areas that our office tries to promote. While we're quite diligent in trying to uncover issues, where there are issues, and try to correct them, the other aspect of what we do is to identify best practices and try to disseminate those best practices in hopes that other government departments pick up on them.

There are three main areas I'd like to talk about. The first one is one I mentioned in the annual report. We're finding that in some departments program managers are involving the procurement community at the front end of the decision-making process. So when there's a decision to launch a new program or build a particular building, having the procurement folks at the table is very important. They need to understand the rationale for the requirements. They need to understand how things are working.

What we found on the other end of the spectrum—we'd been told this by procurement officials, and this is the poor practice—is that they're called in when the decisions are made and they're having to scramble. That's when we know, and we've seen, the corners get cut, because the program manager is under extreme pressure to deliver, the person hasn't accommodated the time that is required to do procurement, and mistakes wind up being made.

So I believe one of the best practices that we've seen is to involve the procurement officials at the front end of the program development process.

The second area is a due diligence initiative. The departments we go into where procurement is working fairly well have robust functioning procurement review committees. So any of the procurement that the department is undertaking in any given month—and most of these committees meet monthly, if not quarterly—are reviewed by the procurement committee. This is something my predecessor mentioned in a couple of reports, and it's something that I believe is a very good practice.

The Chair: Scott, that's the end of your time.

Perhaps you could finish your answer in the context of another question.

Mr. Frank Brunetta: Sure. Thank you.

The Chair: Mathieu Ravignat, five minutes.

Mr. Mathieu Ravignat (Pontiac, NDP): Thank you, Chair.

Thank you to the witnesses for coming, and obviously for your important work.

Just to introduce myself to the rest of my colleagues, I am now the opposition critic for Public Works and Government Services, so I'm here in that function.

I'll give you a little bit of context. You may be aware, and no doubt you are, that the Americans have put forward a bill that includes a Buy American provision. Surrounding that, I'll be asking you questions about your role.

As you know, within NAFTA there are a number of exemptions for purchases of goods. These include the RCMP, National Defence, and a number of other things: R and D, health, social services, but also contracts below \$28,000. But between April 1, 2007, and March 31, 2008, there were 466 contracts under the NAFTA threshold that were awarded to vendors in the United States. For example, Public Works and Government Services Canada had a contract to a Missouri firm for industrial sewing machines at Corrections Canada.

My first question is this. Do you advise the government departments on the use of Canadian suppliers?

Mr. Frank Brunetta: Thank you for the question.

No, my mandate does not involve advising government on any aspect of procurement.

• (1615)

Mr. Mathieu Ravignat: Do you track the use of non-Canadian suppliers?

Mr. Frank Brunetta: Again, that is not within the mandate of the

Mr. Mathieu Ravignat: My following question would be this. Do you think this would be a proper enhancement of the mandate of the ombudsman?

Mr. Frank Brunetta: It's difficult for me to answer that question. As I see it, as I mentioned earlier, the current mandate was developed to fill a gap that existed in the system. Whether it needs to be expanded beyond that is really Parliament's decision.

Mr. Mathieu Ravignat: Thank you.

The Chair: Are you finished with your questions, Mathieu? You have two and a half minutes left.

Sometimes I have a question. It's all right for the chair to ask the odd question, surely.

Mr. Mike Wallace (Burlington, CPC): As long as it's on NDP time, there's nothing wrong with it. I learned that from you on another committee, my friend.

The Chair: I see. It comes back to haunt you, doesn't it.

Actually I do have one question I wouldn't mind adding, and thank you for suggesting that, Mike.

Are you concerned that there's a reluctance to come to the ombudsman for fear of reprisals? I take it you can't guarantee anonymity—you're trying to resolve an issue between a vendor and a supplier, who have to be identified. Is there a reluctance, is there a

chill among the contracting community about coming forward, for fear of not being favourably considered the next time they come forward?

Mr. Frank Brunetta: Thank you for the question, Mr. Chairman.

I raised that issue in my annual report. To be quite blunt, it was the most startling thing that I discovered when we were preparing the annual report. As I was combing through the data with staff, I realized some of these numbers were falling off the table. I started to ask, "Why aren't we dealing with these?", and the answer came back that these suppliers don't want to pursue the issue because they're afraid of being shut out of future business. So it concerned me enough that I added it in the annual report.

We're doing three things to better understand that issue, Mr. Chairman.

The first is that when we responded to calls from suppliers and they were reluctant, we weren't asking the right questions. We were basically saying, "The individual is reluctant. They don't want us to pursue it; we'll put the case on a pending file." And that's where it sat. We've changed the questioning recently to better probe the caller, to better understand why the reluctance is there. I hope to have a better understanding of that reluctance.

Looking at the cases that occurred last year, we're in the process of following up with each individual supplier that expressed that concern, to see whether there's any comfort level in revealing to us why the issue surfaced in the first place. I'm hoping to get a better understanding of that.

The last thing we've done is to contact an industry association to see whether they would be willing to assist us, through their channels, in approaching some of their members to see whether there is in fact an issue.

With those three initiatives, I hope to have a better answer on why that reluctance exists.

The Chair: That's very interesting. Thank you.

It's now Peter Braid's turn.

Go ahead, Peter.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chairman.

Thank you to the witnesses for being here this afternoon.

Mr. Brunetta, if I could just follow up on that particular topic, do you expect to have for next year's report a clear understanding of why there may be some reluctance? Is that the time line we're looking at?

Mr. Frank Brunetta: Quite honestly, I haven't really thought about putting it in next year's report. My primary objective is to understand if there is an issue, and if so, to bring it to the surface and to have it resolved. I'd be more than happy to share the results of our work with this committee if it's of benefit to your work.

• (1620)

Mr. Peter Braid: Is it possible that one of the reasons for reluctance is just simple human nature?

Mr. Frank Brunetta: I've thought about this. It bothered me when I heard about it. As I said to the staff, "We're Canadians; we don't send back soup when it's cold".

In my heart of hearts, I hope that's the issue. Intuitively I think it is. But until I get the information, I don't want to say.

Mr. Peter Braid: I understand. Thank you.

I'm curious to know about the alternate dispute resolution mechanism. That sounds a little cutting edge. Does the ADR apply to the contract award part of your mandate or to the contract administration, or to both?

Mr. Frank Brunetta: It applies to the dispute around the terms and conditions of the contract.

Mr. Peter Braid: So most are administration related.

Mr. Frank Brunetta: The administration side

Mr. Peter Braid: Okay. Can you give us an example of—and I understand you need to respect confidentiality and not provide details, but can you, in general terms, give us an example of a case or a situation that's well suited for your ADR mechanism?

Mr. Frank Brunetta: If the chair will allow me, I'll turn to Janet Labelle, who's responsible. She just conducted a case in the Quebec region that would answer the question perfectly, I believe.

Mr. Peter Braid: Excellent.

Ms. Janet Labelle: Actually we have done a number of alternative dispute resolution facilitations. So that all the members are aware, we must have all parties agree to participate in this. We also work very closely at the outset to try to resolve this and have whatever dispute addressed prior to its going to any sort of formal legal action.

In one particular case that we had, a company had a contract that was terminated for cause and they felt it should not have been. It was deemed by legal counsel as an application of a term of condition of the contract. We sat down with the company and with the department and we ended up addressing it to the satisfaction of both parties. The department agreed that in fact it really wasn't for cause and they agreed that they would change that termination. The company was very happy because they felt that would have been a slight on them and they didn't want to have that on their record. That's one example that we've recently done.

Mr. Peter Braid: It sounds like a very good outcome as well for all parties.

That leads me to my next question. It's always important to have an effective way of dealing with complaints from a customer service perspective. One of the things you'd like to see after dealing with complaints is improvements to systems and processes. Can you give us an example of where a complaint or a trending of complaints has led to an actual improvement in an overall process?

Mr. Frank Brunetta: That's a very good question. Allow me to ask Janet if she can....

Ms. Janet Labelle: Actually, in terms of trending of complaints, we have a business model. I have an absolutely fabulous team. They're all procurement experts; they've been trained in investigations and they are also trained in ADR. So we have a seamless approach to this, but we do deal with individuals and complaints

separate and apart from each other. We use evidentiary thresholds that are not beyond a reasonable doubt but on a balance of probabilities, and we don't use evidence from one file to another.

It's very difficult to say at this point that we're actually having trends for improvements. That would fall into our practice reviews of government departments. All the information that we have feeds into the whole organization for our business decisions.

Mr. Peter Braid: Thank you.

Mr. Frank Brunetta: If I might add, that's a practice within the office. When we collect the data coming in from callers, from supplier complaints, we track to see if there's a trend. If there is a trend, as you say, that provides us with the grounds to launch a practice review, which is a more comprehensive review of the issue. There have been a couple of cases where that's happened.

• (1625)

Mr. Peter Braid: Thank you.

The Chair: Thank you.

Alexandre, for five minutes.

[Translation]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

Mr. Brunetta, I would like to ask you a question, but first I'd like to quote part of your report:

Lastly, while the Treasury Board declared the use of standing offers and supply arrangements mandatory in 2005 for 10 commodity groups of commonly purchased goods and services, the study found that in 2008 more than 200,000 out of approximately 370,000 contracts (including amendments) under \$25,000 were awarded through contractual means other than a standing offer or supply arrangement.

In other words, two thirds of contracts do not meet the requirements set out by the Treasury Board. Is that correct? Do you find that normal?

Mr. Frank Brunetta: Thank you.

[English]

Let me explain. As I mentioned earlier in response to a question on what has changed since the 1990s, a few years ago standing offers and supply arrangements for certain commodities became mandatory. That made things more efficient for departments. Rather than doing contracts on their own for these common goods and services, it made sense to bundle them and have them done together. It's the critical mass theory, where it's cheaper to have them done as a package.

What we're discussing in the report is that while the policy says it's mandatory, some departments are not following that policy; they're still going off on their own. We believe that if the government is going to generate the efficiencies it anticipated with these standing offers and other types of vehicles, that mandatory clause should be enforced.

[Translation]

Mr. Alexandre Boulerice: Actually, otherwise it's a requirement that remains a little theoretical.

On page 17 of your report, you talk about a complaint involving the awarding of a service contract. It involves a conflict of interest. It reads here:

The Office's investigation did not provide evidence to substantiate the allegations. However, the Office concluded that the situation raised the "perception" of conflict of interest or the possibility of unfair advantage. And at the bottom of the page, it reads:

The Office's recommendations resulted in the Department's decision to terminate its arrangement with the bidder and to take corrective action to improve its procurement practices.

What measures did you take to avoid situations where there was the appearance of conflict of interest?

Mr. Frank Brunetta: I'm trying to understand what case you're referring to. It's on page 17?

Mr. Alexandre Boulerice: Yes, but it's on page 17 of the French version.

[English]

Mr. Frank Brunetta: Yes.

[Translation]

Mr. Alexandre Boulerice: It's the first point in a section entitled "Investigations".

[English]

Mr. Frank Brunetta: In cases such as the one cited on page 17, our role under investigations is to reveal the facts. We use a recognized methodology to perform the investigation. We reveal and present the facts. Where we see that corrective action is required, we make recommendations. So the role of the office in this case was to make recommendations to correct the issue we had uncovered.

Ms. Janet Labelle: To give a little bit of background on this investigation, it involved an agency that was part of a larger department. The award of the contract in question was to a not-for-profit organization. The complainant felt that it was not fair. He also felt that the agency was involved in the creation of the organization, was sitting on its board of directors, and had shared space. So there was a lot of information that we had to work with.

When we contacted the department—which we do on every investigation by legislation, and also with the written permission of the complainant—the agency immediately undertook an internal review. As we moved forward on the investigation, they recognized that there was certainly the potential for an appearance of a conflict of interest. They immediately undertook internal changes to the structure, and they actually stopped their relationship with the organization completely.

• (1630)

The Chair: That concludes your time, Alexandre.

Kelly Block for the Conservatives is next.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

I join my colleagues in welcoming you here today and thanking you for being here. I really appreciated learning about your office and your explanation of your role and mandate, especially in filling that gap for the small to medium-sized businesses.

You suggested, Mr. Brunetta, that it's fairly early days for you in your position to provide any kind of an assessment on what's working or what kinds of improvements may need to be made within your office. But in your opening comments you made reference to your office's recently completed strategic plan that will be guided by three strategic drivers. You also referenced this in your annual report, where you called them three pillars. I'm wondering if you would be willing to expand on those three pillars and how they will assist you in delivering your mandate.

Mr. Frank Brunetta: Certainly, and thank you for the question.

Let me begin by saying that I believe a large part of my responsibility and the office's responsibility is to educate. That's the first component of the pillars. As I've mentioned this afternoon, I believe that with respect to whether we can help prevent procurement concerns from escalating, through early intervention or providing relevant information, our office is key in helping educate both stakeholders and the procurement community. I believe that disseminating best practices and information that is being provided to us from suppliers within government or explaining the procurement system to suppliers is a key role that this office has to play.

As I mentioned to you, many of the calls we're getting are related to this pillar. People, especially new entrants to government business, are not sure how to do things, and I believe our role is either to provide whatever information we can or to direct them in the right direction.

The second pillar is the facilitation pillar. I find this to be a particularly important one, in that in the case of many of the calls we're receiving from suppliers, they are at the point of being completely frustrated with government. They have reached the end of their rope and they want something done. In these cases, I see the office's role as putting that person in contact with the right individual. I'm sure we've all experienced cases in which we're trying to get hold of some office in government and we get the proverbial runaround. In the case of my office, I don't want that to happen. We'll make the calls; we'll put the person in contact with whoever he or she needs to be in contact with to do business with government.

The other side of that equation is that when things have escalated—the supplier has dealt with a government department trying to resolve an issue and has gotten to the point at which the only recourse is legal—we want to be involved to facilitate some dialogue, either through a facilitation process or through our ADR business line.

Finally, I believe we have a very important role in investigating. Many of the issues that come to us are very fixable through facilitation, but it's inevitable that occasionally there are issues that need to be investigated. In that case, whether it's through a practice review, a study, or a formal investigation, I believe my role is to go into the issue, the file, or the organization, uncover the facts, and present them as I see them so that there's transparency around what has occurred.

The strategic plan we've developed is around those three pillars.

Mrs. Kelly Block: Thank you.

Could you tell me how many staff are employed in your office?

Mr. Frank Brunetta: We have a budget of 25 FTEs, in government lingo, but the actual number of people in the office fluctuates between 18 and 22. We have, like any other organization, departures and promotions.

Mrs. Kelly Block: Thank you.

The Chair: Thank you, Ms. Block. That concludes your time.

That also concludes the second round of questioning, Mr. Brunetta, so we're all finished with you as a witness. We thank you and your staff for coming and presenting your report and answering questions from the committee. We hope you become a regular visitor to this committee as you submit annual reports, or in between reports as we may deem it necessary to give you a call.

Thank you for your time.

Mr. Frank Brunetta: Thank you, Mr. Chairman, and thank you to the committee. I hope the presentation and the answers were informative, and I welcome the opportunity to come again.

The Chair: I think we all agree it was very helpful.

Thank you.

Mr. Frank Brunetta: Thank you.

The Chair: If we could ask committee members to stick around for five minutes, we're going to bang the gavel and go in camera and approve our annual budget, if that's agreeable.

Mr. Mike Wallace: Mr. Chair, I'm willing to move this budget. Do we have to go in camera for that?

The Chair: No.

Mr. Mike Wallace: I think it will take 10 seconds.

So the budget that is presented in front of us, which I'll move, is for the guests that we've invited for the upcoming study. Is that not correct?

The Chair: Yes, it is. This is the budget for the study that we've agreed to on the Office of Small and Medium Enterprises.

Mr. Mike Wallace: I'm happy to move that then.

The Chair: Okay. It has been moved. Are there any speakers on the motion?

Mr. Alexandre Boulerice: No, it's not on the motion, but I have a declaration to make to this committee.

The Chair: Oh, that's right. If we could, we'll deal with this budget and then if we could ask people to stay for one minute more, Alexandre has something he would like to say to the committee.

Hearing no other debate on the motion, the motion to approve the budget for the study on OSME, all those in favour?

(Motion agreed to)

Mr. Mike Wallace: The other piece, the report, do we need to approve that also?

The Chair: I'm sorry, that's right.

For information to the committee members, your steering committee had a meeting the other day—I can't remember when it was. This is the first report of the steering committee. It has been circulated to you and we need the approval of the committee for the recommendations of the steering committee.

Mr. Mike Wallace: Right. So the steering committee just sets out the agenda up to the November break. Is that not correct?

The Chair: That's correct.

Mr. Mike Wallace: Okay, thank you. I'll support that then.

The Chair: Is there a mover to approve the first report of the subcommittee? So moved. All those in favour?

(Motion agreed to)

The Chair: Thank you.

Alexandre, you have the floor.

[Translation]

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

Mr. Chair, I would like to apologize to you, to this committee and to its members.

One of my assistants made a mistake involving the procedures and rules at the last committee meeting. The in camera rules were misunderstood and the assistant sent some trivial information.

We understood that in camera meant there would be no witnesses, not that it would not be recorded. Although we do not agree with this type of thing, what we call a gag, our respect for democratic institutions means that it will not happen again.

Thank you very much.

[English]

Mr. Mike Wallace: Thanks. That's no problem.

The Chair: Thank you, Alexandre. Mr. Mike Wallace: Thank you.

The Chair: Thank you, committee members.

There's a motion to adjourn.

The meeting is adjourned.



Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

1782711 Ottawa

If undelivered, return COVER ONLY to: Publishing and Depository Services Public Works and Government Services Canada Ottawa, Ontario K1A 0S5

En cas de non-livraison, retourner cette COUVERTURE SEULEMENT à : Les Éditions et Services de dépôt Travaux publics et Services gouvernementaux Canada Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la Loi sur le droit d'auteur.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt

Travaux publics et Services gouvernementaux Canada Ottawa (Ontario) K1A 0S5 Téléphone : 613-941-5995 ou 1-800-635-7943

Télécopieur: 613-954-5779 ou 1-800-565-7757 publications@tpsgc-pwgsc.gc.ca http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca