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Canada

GUIDE TO BEST PRACTICES IN INTEGRITY IN PUBLIC PROCUREMENT

A Collaboration by the Federal, Provincial, Territorial Deputy Heads Integrity Practices Initiative



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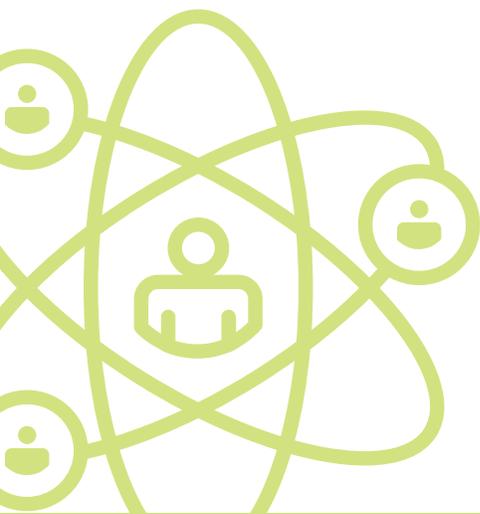
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ANNEX A: THE OECD PRINCIPLES FOR INTEGRITY IN PUBLIC PROCUREMENT



1. INTRODUCTION

Public procurement is a complex process involving diverse stakeholders and significant public funds. As stewards of public funds, governments have a responsibility to strengthen integrity throughout their procurement processes. Adopting frameworks and policies to promote integrity helps to protect governments from financial and reputational risks and promotes the responsible use of public money.

Integrity in public procurement can be defined as “the use of funds, resources, assets, and authority, according to the intended official purposes, to be used in line with public interest.”¹ A lack of safeguards in the public procurement process exposes governments to unethical business practices and an increased risk of the misuse of public funds. Unethical business practices undermine fair competition, threaten the integrity of markets, create barriers to economic growth, and erode the public’s confidence in government institutions. Implementing effective integrity practices helps governments mitigate these risks.

All jurisdictions face challenges in mitigating risks to integrity in the public procurement process. Governments’ must balance the need to mitigate these risks while ensuring procurement processes are not overly complicated or burdensome. Canada is a large, geographically diverse country, and each region has unique needs and obstacles such as a limited pool of suppliers in some remote jurisdictions or a lack of expertise in certain complex technical processes. These issues are compounded by the need to consider the various procurement rules, legislation and trade agreements across jurisdictions, which may have differing requirements. Conflicts can arise when governments’ attempts to use procurement as a strategic tool clash with requirements set out in interprovincial, national and international trade agreements.

Unethical Business Practices include:

- corruption including bribery, “kickbacks”, nepotism, cronyism and clientelism
- fraud and theft of resources, for example through product substitution in the delivery which results in lower quality materials
- conflict of interest in the public service and in post-public employment
- collusion
- abuse and manipulation of information
- discriminatory treatment in the public procurement process
- waste and abuse of organisational resources

[*OECD Principles for Integrity in Public Procurement*](#)

1 Integrity Definition, OECD Principles in Integrity in Public Procurement, p. 19: <https://www.oecd.org/gov/ethics/48994520.pdf>

1.1 Background

This Guide to Best Practices in Integrity in Public Procurement (the Guide) was developed by the Federal, Provincial and Territorial (FPT) Deputy Heads Integrity Practices Initiative (the Initiative) to help governments across Canada address challenges in ensuring integrity in the procurement process by highlighting effective measures from across jurisdictions, as well as examples of tools, policies and practices that can be implemented or adapted as desired.

The objectives of the Initiative are:

- to share information as a community of practice with experience in applying integrity policies and programs that aim to encourage the ethical behaviour of suppliers; and,
- to review areas of policy alignment as a means to create a level playing field and standardize requirements on government suppliers

The Initiative includes members from all Federal Provincial and Territorial jurisdiction across Canada and is led jointly by Public Services and Procurement Canada's (PSPC) and the Secrétariat du Conseil du trésor du gouvernement du Québec (SCT). The Initiative was created in recognition that all jurisdictions face similar issues related to unethical business practices in public procurement, and have a shared interest in learning from each other's experiences.

Over the past several years, the Initiative has been building an inventory of integrity measures that are already in place across FPT jurisdictions. This has been a collaborative effort, with members of the Initiative providing feedback and knowledge about their respective jurisdictions.

At the 2018 Annual Deputy Heads in Public Procurement Meeting in Halifax, Nova Scotia, representatives from PSPC gave a presentation titled *Recent Evolution in Federal-Provincial-Territorial Integrity Practices in Public Procurement*, which elaborated on some elements of the jurisdictional scan, providing an outline of each jurisdiction's integrity measures. The Initiative subsequently committed to delivering a Guide to Best Practices in Integrity in Public Procurement.

1.2 About This Guide

The purpose of this Guide is to highlight notable overarching integrity measures at the organizational level as well as the pre-contracting and contracting phases of the procurement cycle. The Guide builds upon previous work completed by the Initiative and will provide jurisdictions across Canada with further examples of tools, policies and practices that support integrity in public procurement, which they can implement or adapt to their own programs as desired.

This Guide does not cover the contract management and post-contract management phases of procurement cycle. It is recognized that these stages of the procurement cycle have their own unique set of risks and vulnerabilities and may be addressed in future phases through continued collaboration with the Initiative. It is expected that this Guide may evolve over time to address these additional areas and to address key areas of interest in greater detail.

1.2.1 How this guide was developed

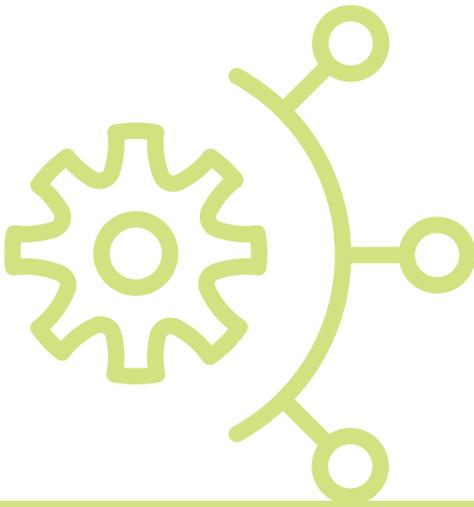
Following the 2018 Annual Deputy Heads meeting, further input was solicited from FPT partners through surveys and discussions. Each subsequent outreach activity narrowed the focus of the Guide based on the topics of greatest interest within the group. The highlighted topics ranged from small and large-scale initiatives to novel approaches and emerging best practices; together, they formed the basis for the Guide. Patrice Poitevin, an internationally recognized expert on anti-corruption, ethics and compliance, was engaged as a consultant to conduct interviews with experts across the FPT jurisdictions and to gather information on the practices in place. Notable and novel approaches to integrity in public procurement identified during those interviews are highlighted throughout the Guide.

This Guide also builds on relevant international work in the area of integrity in public procurement. Canada is a member of the Organisation for Economic Co-operation and Development (OECD), an intergovernmental economic organization that provides a forum for member states to work together and identify best practices on economic and governance issues. The OECD is recognized as a leader on issues related to integrity in public procurement.

The OECD has developed the [*OECD Principles for Integrity in Public Procurement*](#), an OECD recommendation containing ten principles for enhancing integrity in public procurement. The OECD principles were created to provide policy guidance to governments regarding the prevention of waste, fraud and corruption in public procurement. The principles are anchored in four pillars:

- 1) transparency
- 2) good management
- 3) prevention of misconduct
- 4) accountability and control

The OECD Recommendations provided a foundation for the structure and best practices identified in this Guide. The information in this Guide reflects each of these pillars and their supporting principles. See Annex A for further information about the OECD Recommendation.



2. OVERARCHING INTEGRITY MEASURES

Overarching integrity measures refer to measures that provide a foundation for integrity throughout the procurement cycle by helping integrate the core pillars of integrity; transparency, good management, prevention of misconduct, and accountability and control. Overarching integrity measures support and promote ethical behaviour at the organizational level.

This section of the Guide provides examples of the following overarching measures that support integrity throughout the procurement process:

- Emphasizing Integrity through Tone From the Top
- Ethics as a component of Codes and Standards
- Measures for managing Conflicts of Interest
- Training and Professional Development
- Codifying Integrity Measures

2.1 Emphasizing Integrity through Tone From the Top

Tone from the top refers to the environment created in the workplace by an organization's leadership. A commitment from senior management to emphasize ethical behaviour through a strong tone from the top is vital in creating a corporate culture of integrity.²

When senior management encourages a strong sense of ethics in an organization, employees are more inclined to uphold those values. Setting the tone can be accomplished by leading by example, voicing support and by institutionalizing and upholding integrity practices. In contrast, if senior management seems unconcerned with ethical practices or ensuring a corporate culture of compliance employees may only focus only on delivering business priorities.

Tone from the Top

“An effective anti-corruption programme must be based on the strong, explicit and visible support and commitment from the senior management of the company. Even a well-defined programme will fail to reduce the risk of corruption if employees and business partners perceive that senior management is not committed to preventing corruption.”

[UNODC Anti-Corruption Guide](#)

2 OECD, *Trust and Business: Corporate Governance and Business Integrity*: <http://www.oecd.org/daf/ca/Corporate-Governance-Business-Integrity-2015.pdf>

2.1.1 Cross-Canada overview

Across Canada, jurisdictions are increasingly placing integrity front and centre in their procurement strategies, values and ethics statements, and codes of conduct. A number of jurisdictions have appointed senior ranking executives as integrity champions to support the implementation and administration of integrity initiatives. The work being done by FPT jurisdictions and the collaboration in initiatives such as this Guide serve to demonstrate the continued importance and recognition of a shift toward integrity as an integral part of the procurement process.

2.1.2 Practices to highlight

2.1.2.1 British Columbia – Ethics Advisors

Each ministry in the Government of British Columbia has a senior executive named as an ethics advisor who promotes and supports a culture of ethics in the procurement lifecycle. The ethics advisor is typically a Deputy Minister, Associate Deputy Minister, Assistant Deputy Minister, or Executive Lead. Ethics advisors are expected to demonstrate active leadership in upholding British Columbia's public service commitment to integrity by ensuring that ethics are understood to be a corporate priority.³ The responsibilities of ethics advisors include:

- providing advice on standards of conduct issues, including addressing possible conflicts of interest and ethical issues
- promoting knowledge and resources within their ministries that encourage a culture that addresses ethical issues
- seeking guidance from the British Columbia Public Service Agency on complex ethical issues or those that cannot be easily resolved
- receiving disclosures and providing advice to employees regarding the [Public Interest Disclosure Act](#) (PIDA), BC's whistleblower protection legislation
- actively championing professional and business ethics within their ministry and the corporate network of ethics advisors
- working with the corporate ethics leads to ensure a consistent approach to ethics management across the public service and directing employee questions to the right services

By designating a senior executive to the role of ethics advisor, the Government of British Columbia effectively demonstrates to employees the importance the organization places on integrity.

³ Government of British Columbia, Who to Talk to about BC Public Service Employee Ethics: <https://www2.gov.bc.ca/gov/content/careers-myhr/about-the-bc-public-service/ethics-standards-of-conduct/ethics-contacts>

2.1.2.2 Québec – Contract Rules Compliance Monitors

All Government of Québec public bodies subject to the [Act Respecting Contracting by Public Bodies \(LCOP\)](#)⁴ must name a Contract Rules Compliance Monitor (RARC) who is assigned to promote integrity within the organization, ensure that integrity measures set out in laws, regulations, directives and policies are effectively implemented, and advise senior management with regards to compliance. The RARC report directly to the head of the public body and receive specialized training over and above that which is required for most procurement employees. The Secrétariat du Conseil du trésor du gouvernement du Québec (SCT) organizes meetings with the compliance monitors from various public bodies in order to discuss areas of common interest and exchange best practices.

The requirement to appoint a senior official to this position demonstrates a clear commitment to promote integrity and compliance and thereby promotes organizational buy-in.

2.2 Ethics as a component of Codes and Standards

Codes of conduct and standards are important statements about values and ethics that are shared throughout an organization and help reinforce a culture of ethical behaviour. Well-articulated codes and standards help ensure that employees have a clear understanding of the expectations of public servants, and provide clear examples of acceptable and unacceptable behaviours. They also signal the organizations expectations to external stakeholders and the public.

Codes and standards that outline an organization's values and ethics set a foundation for integrity and professionalism as they influence the daily behaviour of procurement officials and directly contribute to creating a culture of integrity. Communicating integrity standards is essential to ensure all members of an organization have the capacity to handle ethical dilemmas and helps to instill a strong corporate culture of compliance. Well-defined codes and standards typically include both general and specific terms that convey overall values, while also definitively disavowing certain specific conduct, such as directing government funds for personal benefit. A signed commitment to abide by the standards set out in the code of conduct may be required from employees when they first join an organization and may be a condition of continued employment.

Similar to an internal code of conduct, a code of conduct for suppliers can help ensure that businesses engaging with Government organizations adhere to the same ethical principles as the contracting authority. Codes

What Does a Code of Conduct Do?

Codes of conduct set clear expectations for behaviour and provide examples of unacceptable activities and signal the organizations expectations to all stakeholders and the public.

⁴ Integrity provisions apply to municipal agencies as well as government corporations, although they are not subject to the LCOP.

and standards for suppliers help reduce occurrences of misconduct by clarifying the procurement authority's expectations of the supplier. Contracts may require a commitment from suppliers to comply with the contracting organization's code of conduct for suppliers. A code of conduct for suppliers typically includes specific prohibitions, such as participating in bid-rigging, as well as requirements to abide by local laws and regulations and maintain minimum working standards for employees. They may also include more general considerations that are important to the corporate or organizational brand such as a commitment to environmentally sustainable practices. Most codes also provide linkages to additional information and resources that employees and suppliers can use when faced with a dilemma.

2.2.1 Cross-Canada overview

It is standard practice across Canada to require public service employees to adhere to a code of conduct and values and ethics guidelines. Although this requirement is not limited to those involved in procurement activities, it is of particular importance for those working in the procurement profession because of their responsibility to safeguard public funds and their increased risks of exposure to corruption, fraud and other unethical business practices.

Core values set out in codes of conduct for employees of Canadian jurisdictions typically include acting with integrity, maintaining discretion, impartiality, using public resources responsibly, reporting conflicts of interest and a prohibition on accepting gifts related to functions of employment. In most jurisdictions, employees are required to commit to adhering to these requirements when signing employment contracts or to swear an oath to abide by them upon acceptance of employment. Saskatchewan for example, has a Code of Conduct Policy which provides guidance for supplier and public entity employees regarding their conduct before, during and after competitions. In some jurisdictions employees involved in procurement are also required to reconfirm their adherence to these conditions from time to time.

Most employment contracts for public servants require employees to keep information confidential, to conduct themselves in a professional manner, and to only use government resources for their intended purposes. Failing to abide by these standards can lead to a range of disciplinary actions by the employer – up to and including dismissal of the employee.

2.2.2 Practices to highlight

2.2.2.1 Newfoundland and Labrador – Code of Ethics

The Government of Newfoundland and Labrador has included a code of ethics for employees involved in public procurement in its



[Public Procurement Policy](#). It includes the following core elements, consistent with the principles for integrity identified by the OECD:

- **Honesty/Integrity:** Maintain a high standard of integrity in all business relationships. Honesty, care and due diligence shall be integral to all procurement activities.
- **Equality:** Provide fair and equitable treatment to all suppliers. All actions taken will be impartial and based on the merits of the matter.
- **Professionalism:** Foster the highest standards of professional conduct. Respect shall be demonstrated to each other.
- **Accountability/Transparency:** Ensure procurement activities are open, transparent and accountable. Public-sector resources shall be used in a responsible, efficient and effective manner.
- **Compliance/Conformity:** Comply with all applicable laws, regulations, trade agreements, policies and procedures and not engage in any activity to circumvent the clear intention of the law.

2.2.2.2 Ontario - Ethical Procurement Policy

Supply Chain Ontario's **[Ethical Procurement Policy](#)** uses strategic policy to integrate values and ethics important to the organization throughout the supply chain. The policy supports ethical business practices by requiring that apparel vendors confirm their products are made in compliance with all local laws governing labour and working conditions. Vendors must provide the names and addresses of the manufacturers they use to produce the apparel they supply. Suppliers must provide this information prior to entering into an apparel contract valued at or above \$5,000. The Government of Ontario makes this information available to the public in the **[Responsible Manufacturers Information Report](#)** which allows the public to scrutinize the information.

2.2.2.3 Canada – Code of Conduct for Procurement

The Government of Canada's **[Code of Conduct for Procurement](#)** applies to both government employees and vendors alike. It is a single point of reference regarding key responsibilities and obligations of public servants and vendors. The Code aggregates a number of different terms and conditions into an easy-to-read document and also accommodates additional strategic procurement policy objectives, such as ethical sourcing.

The Government of Canada's Code of Conduct for Procurement helps ensure that public servants and suppliers are working from the same statement of expectations and commitments, which clearly outline what is acceptable conduct when contracting with the government.

2.3 Measures for Managing Conflicts of Interest

Conflicts of interest in public procurement can compromise the fundamental integrity of procurement officials and the decisions they make, which in turn may undermine the public's confidence in the public service. Conflicts of interest can be either real or perceived. A perceived conflict of interest, which is when it appears that a public official's private interests *could* improperly influence the performance of their duties, whether or not this is in fact the case, can be as damaging to a government's reputation as an actual conflict of interest.

Implementing effective reporting and monitoring mechanisms for conflicts of interest such as requiring employees to declare potential and known conflicts of interests on an ongoing basis, as well as implementing risk mitigation strategies that limit the amount of information available to employees helps to mitigate the risks that arise from conflicts of interest.

Measures to mitigate conflicts of interest, such as prohibiting concurrent employment with potential suppliers, may be added to employment contracts to reduce instances of employees engaging in behaviors that increase the risk of real or perceived conflicts of interests. To further mitigate risks, these provisions may be extended to post employment periods in which a former employee is prohibited from working for a government supplier for a period of time following the conclusion of their public service career or for which there could be a conflict of interest.⁵

The OECD has published guidelines called [*Managing Conflict of Interest in the Public Service*](#), which provide recommendations for effective conflict of interest measures.⁶ The guidelines include the following elements:

- Define conflict of interest and identify situations which have potential to put organisational and individual integrity at risk
- Identify specific occurrences of unacceptable conflict of interest situations
- Demonstrate a commitment to implementing the Conflict of Interest policy
- Identify at-risk areas for prevention and awareness that assists compliance
- Provide mechanisms for appropriate disclosure of adequate information and effective management of conflicts

What is Conflict of Interest in Public Procurement?

“A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of their official duties and responsibilities”.

[OECD Glossary of Statistical Terms](#)

5 Government of Canada, Apparent Conflict of Interests: <https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/conflict-interest-post-employment/apparent-conflict-interest.html>

6 OECD, Managing Conflict of Interest: <https://www.oecd.org/gov/ethics/managingconflictinterestinthepublicservice.htm>

- Create and maintain partnerships with other stakeholders, including contractors, clients, sponsors and the community
- Assess and evaluate the Conflict of Interest policy in light of experience, redevelop and adjust policy and procedures as necessary to meet evolving situations.

2.3.1 Cross-Canada overview

Many Canadian jurisdictions require procurement staff to sign a conflict of interest declaration on a yearly basis, and several jurisdictions require employees to also disclose any real or perceived conflicts of interest on an ongoing basis. Others rely on adherence to a code of conduct or standards for values and ethics that include the requirement to disclose any conflicts of interest as they arise as a condition of employment. Saskatchewan for example, has Conflict of Interest policies to clarify expectations related to actual or perceived conflicts of interest.

Most jurisdictions require a “cooling off” period for civil servants previously involved in procurement once they have left the public service. For example, Québec legislation prohibits former public servants from obtaining employment with entities with which they have had significant dealings during their time in the public service for one year after they have left the public service. This includes acting on an organization’s behalf, even if not directly employed by them, in matters in which they would have had dealings during their employment with the government. Similarly, [Alberta’s Conflict of Interest Act](#) (ACIA) has a one-year prohibition on former ministers accepting employment or acting as representatives for firms with which they had substantial dealings during their employment as a minister.

2.3.2 Practices to highlight – Preventing Conflict of Interest

2.3.2.1 Ontario – Public Service Ontario Act

Ontario has well-developed regulations (381/07) under the [Public Service of Ontario Act, 2006](#), which incorporate a number of the OECD guidelines. The regulations define rules for identifying, reporting, and addressing real, perceived and potential conflicts of interest by members of the public service. The regulations specify conduct that is prohibited while employed as a public servant, including prohibitions on the following:

- using their employment to directly or indirectly benefit themselves or their family
- allowing the prospect of future employment opportunities to detrimentally affect the performance of their duties
- accepting gifts that a reasonable person might conclude could influence the public servant when performing their duties

- disclosing confidential information obtained during the course of their employment
- giving preferential treatment to any person or entity in which the public servant has an interest
- entering into contracts or hiring their family members
- entering into outside employment that would put the public servant in conflict with their duties to the Crown, or if another person or entity would benefit by the employees position with the Crown
- participating in decision making on matters that could benefit the public servant's private interests

Ontario's Public Service Act provides clear examples of prohibited activities and sets out in legislation, the obligations to disclose of conflicts of interest when they arise and how they might be managed.

2.3.2.2 Nova Scotia – Conflict of Interest Act

The Government of Nova Scotia has implemented a [Conflict of Interest Act](#) which applies to all public servants and authorizes a fine of up to \$50,000 for engaging in prohibited activities within six months of leaving the public service. The period extends to one year for ministers and ministerial assistants.⁷

In many Canadian jurisdictions, the consequences for breaching conflict of interest provisions, typically up to and including dismissal, are not enforceable once an individual has left the organization. This provides little deterrent for engaging in prohibited post-employment activities. Nova Scotia's Conflict of Interest Act addresses this gap by allowing fines to be imposed for breaches of the Act during the prescribed period after an individual has left the public service.

2.4 Training and Professional Development

Public procurement is increasingly becoming recognized as a profession that plays a central role in ensuring the stewardship of public resources by preventing mismanagement, waste, and corruption. Integrity is a core element of professionalism and governments can attract highly qualified and skilled professionals to careers in public procurement by supporting professional development and training. Opportunities for professional development, along with regular training to enhance knowledge and skills, provides incentives that attract highly qualified individuals. Employers enhance the career prospects for employees by promoting continuous learning, fostering the development of professional

⁷ Government of Nova Scotia, *Conflict of Interest Act*: <https://nslegislature.ca/sites/default/files/legc/statutes/conflict.htm>

networks, and requiring a high degree of professional standards. This in turn attracts high quality, skilled, and knowledgeable candidates, which enhances resistance to mismanagement while reducing waste and corruption. These relationships with other procurement professionals also facilitates sharing of best practices and emerging trends in procurement, which can help strengthen integrity throughout the system.

Ongoing training for employees in public procurement, including on integrity related topics, can mean that, not only do employees have the transactional knowledge to do their work, but can also identify and effectively mitigate risks related to integrity in procurement. In practice, this could include being able to identify real and potential conflicts of interest, having an awareness of integrity standards, and being able to identify mistakes or oversights in administrative tasks that could lead to increased exposure to integrity related risks. Specific training on topics such as the mandatory disclosure of conflicts of interest and on policies related to hospitality and gifts may be introduced for officials in positions that are especially vulnerable to malfeasance or misconduct.

2.4.1 Cross-Canada overview

The training and professional development opportunities provided to procurement officials in Canada vary between jurisdictions. A number of jurisdictions across Canada have created or participate in professional procurement forums and networks that enhance professionalism among procurement employees. Associations such as the Canadian Public Procurement Council and Supply Chain Canada actively promote the professionalization of the procurement profession through advocacy, networking and training opportunities for their members. This increased professionalism, in turn, fosters a culture of integrity.

The Governments of Alberta, Nova Scotia, British Columbia, and the federal government all have mandatory courses for procurement officers related to ethics and integrity. Alberta's training program has addressed all aspects of the procurement and contracting cycle and includes components taught by legal subject matter experts. Nova Scotia's program is similarly structured. British Columbia has a particularly comprehensive procurement training program, the Procurement and Contract Management Program (PCMP), which allows interactive and collaborative learning and has extensive online resources available to procurement officers.

Several jurisdictions, including Nova Scotia, Manitoba, Nunavut and the Yukon, support and encourage their staff to complete training through external third parties, such as the Public Sector Procurement Certification through National Education Consulting Inc. (NECI) courses through the Procurement Law Office, as well as the Supply Chain Management Professional (SCMP) accreditation.

“Recognizing officials who work in the area of public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption.”

[OECD Principles for Integrity in Public Procurement](#)

Resources from the Competition Bureau for anti-fraud and anti-collusion/corruption are frequently used by a number of Canadian jurisdictions. The Competition Bureau website offers resources that can help public procurement authorities and private firms reduce the risk of exposure to anti-competitive behaviour. The Bureau also offers ad-hoc presentations and training to large organizations.

2.4.2 Practices to highlight

2.4.2.1 British Columbia – Procurement Community of Practice

The [British Columbia Procurement Community of Practice \(PCoP\)](#) is a professional development network for public procurement employees where all government and public sector staff engaged in procurement and contract management can respectfully and openly share and exchange information, knowledge, expertise, and ideas relating to procurement and contracting. Membership is not only open to the Government of British Columbia employees and the broader public sector in British Columbia engaged in procurement, but has been extended to members of the public service in other jurisdictions. The group hosts monthly webinars, shares a quarterly newsletter and holds bi-annual government procurement conferences.

The PCoP platform provides procurement staff with a unique and dynamic platform to interact with other procurement practitioners and share best practices and innovative approaches. This collaborative approach supports the professionalization of the public procurement function and helps promote greater integrity and consistency in the procurement process.

2.4.2.2 Québec – Training offered by SCT and UPAC

The Government of Québec's Secrétariat du Conseil du trésor du gouvernement du Québec (SCT) provides robust training to stakeholders involved in public procurement. In addition to general procurement training, stakeholders receive training on specialized topics such as risk management. Individuals in strategic contract management positions, such as selection committee secretaries and RARCs, receive training tailored to their positions.

Additionally, the Unité Permanente Anti-corruption (UPAC), Québec's specialized anti-corruption police unit, offers training on integrity in procurement, anti-corruption and collusion, and provides tools to assess and manage risks related to fraud, corruption, and other criminal acts.

The suite of training available helps to develop the professional expertise of Québec's procurement staff and training provided by anti-corruption experts assists them in recognizing indicators of unethical business practices.

2.4.2.3 Saskatchewan - Comprehensive Procurement Training

Saskatchewan's procurement training is intended to help stakeholders better understand procurement rules, trade agreements, and best practices, and to improve outcomes achieved through early, consultative and results based engagement in the procurement process. Course offerings include:

- Introduction to Public Procurement and Intermediate Level Procurement Functional Training
- Advanced/ Strategic Procurement
- Scope of Work Writing and Requirements Development
- Vendor Performance and Assessment
- Evaluation Practices
- Vendor Debriefing
- Competition and Contract Templates and processes, including a specific course on Best and Final Offers

New courses and materials are constantly under development and are based on new policies, practices and participant feedback.

2.5 Codifying Integrity Measures

Having clear, concise and comprehensive integrity measures in place makes the public procurement process more predictable, transparent, and accountable. Codifying integrity measures clarifies expectations for all involved and supports the development of an appropriate corporate culture of compliance. There are several methods, which are not exclusive, available to governments to introduce integrity measures into their procurement processes, including: legislation and regulations, policies, contractual provisions, directives, and programs.

Legislative and regulatory frameworks provide a legal foundation to help mitigate risks in procurement and provide judicial oversight to the process. This offers a sense of permanency while supporting the independence of decisions made in the procurement lifecycle. However, legislation and regulation can also be challenging and time-consuming to implement or modify. A policy-based approach provides greater flexibility than a legislative or regulatory approach, and can accommodate changing circumstances including the ability to quickly address evolving issues however it lacks the authority and stability provided by legislation. Contractual measures provide the most flexibility and can be tailored to specific contractual circumstances; however, they provide less consistency and transparency than other options.

Choice of Instrument

Policy and contract-based approaches can be implemented and adapted easily, however legislative and regulatory tools provide a legal foundation for enforcement of measures and additional oversight and transparency. Most jurisdictions use a combination of tools to achieve their objectives.

Deciding which approach to adopt is complex and requires weighing the benefits and limitations of each method. The following sections describe examples of each approach.

2.5.1 Cross-Canada overview

All Canadian jurisdictions have integrity measures codified in their procurement processes using some combination of legislation, regulation, policy, directives, bulletins, and contract provisions. For example, all jurisdictions include integrity related clauses, such as conflict of interest declarations and prohibitions on bid-rigging and collusion, in the terms and conditions of their contracts. Across Canada, most procurement processes also include additional checks and balances, which although not specifically designed to ensure integrity, actively support it. For example, security screening measures and internal investment analyses that are required to determine the best value in a procurement process make it more difficult to manipulate the system.

A number of jurisdictions in Canada have specific integrity elements codified in legislation. The Government of New Brunswick recently introduced debarment provisions for certain criminal offences. The Government of Québec has enacted many integrity provisions in legislation, including debarment, which are often covered through policy or contracts in other jurisdictions. A number of provinces have included rules for the disclosure and treatment of conflict of interest in either conflict of interest legislation, or in legislation governing their respective public service. Codifying these requirements in legislation and regulations can make it easier to take action when a requirement is breached.

Other provinces have elected to take a policy based approach to including integrity measures in the public procurement process. Saskatchewan, for example, employs a wide variety of policies, practices, tools and training to ensure its procurement practitioners have the required resources, tools and skills to support integrity in public procurement, while also achieving best value for taxpayers. Collectively these resources provide an overall framework that supports integrity in Saskatchewan's public procurement processes while also providing it the flexibility to quickly adapt to changing circumstances.

2.5.2 Practices to highlight

2.5.2.1 Québec – Legislative and Regulatory Framework

The Government of Québec has implemented a wide-ranging and comprehensive legislative and regulatory framework for public contracts

through the [*Act Respecting Contracting by Public Bodies \(LCOP\)*](#).⁸

The LCOP covers all provincial public bodies in Québec which includes government ministries and agencies, educational institutions, health and social services institutions and their subsidiaries.

The LCOP provides two different company registries that public bodies must consult before concluding public contracts to ensure that bidders are eligible and authorized to do business with the Government of Québec:

- The first is the registry of entities ineligible for public contracts (RENA). RENA is a list of companies that have been declared ineligible to do business with the Government of Québec as they, or their directors, have been found guilty of an offences listed in the LCOP.
- The second is the registry of firms authorized to contract with the Government of Québec (REA). Companies that want to do business with the government must obtain an authorization to contract from the Autorité des Marchés Publics (AMP) in order to be awarded a contract valued above certain thresholds.

The LCOP also brings legislative and regulatory authority to integrity, transparency and accountability provisions that are often covered by policies or contracts in other jurisdictions. For example the following obligations are covered in the LCOP:

- Requiring a public tender for contracts with an estimated amount above a certain threshold, including those not subject to intergovernmental trade agreements
- Requiring a notice of intention on the electronic tendering system (SEAO) at least 15 days before entering into a contract, thereby allowing any company to express interest
- Publishing all public tenders on an electronic tendering system
- Prohibiting contract-splitting as a method to avoid thresholds for public tenders
- Requiring mitigation measures for contracts below the threshold for public tenders, such as using a rotational system to award such contracts
- Designating an individual within each public body, namely the contract rules compliance monitor, to ensure contract management processes at the body comply with the LCOP and its associated regulations, policies and directives
- Establishing procedures for receiving and examining complaints about the process for awarding public contracts

8 Légis Québec, Act respecting contracting by public bodies:
<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-65.1>

- Introducing provisions regarding ineligibility for public contracts and the creation of a register of ineligible enterprises (RENA)
- Creating the requirement to obtain authorization to do business with public bodies and a register of companies with such authorization (REA)
- Ensuring that companies pursuing contracts with the government have a certificate of tax compliance from Revenu Québec in order to enter into contracts of \$25,000 or more
- Publishing contract award details for all contracts above \$25,000

2.5.2.2 Nova Scotia – Public Procurement Act

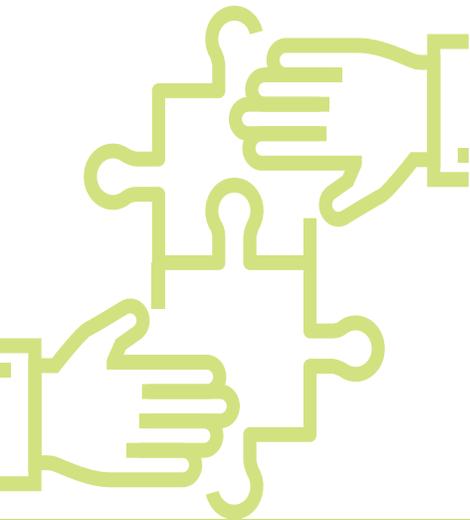
Nova Scotia's [Public Procurement Act](#) lays out clear obligations that must be carried out by public sector entities to support integrity in public procurement principles include transparency, good management, and a high of professional standards, knowledge, and skill. The Act requires that public sector entities:

- publicly tender for all goods, services, construction and facilities, in accordance with the applicable regional, national or international trade agreements and post the contract award details on the web portal
- publicly post its procurement policies
- participate in professional development programs and sector outreach programs
- incorporate contract and risk-management guidelines into the procurement process, and
- become familiar with and adopt practices in line with the Competition Bureau of Canada bid rigging awareness and prevention guidelines

2.5.2.3 Ontario – Broader Public Sector Procurement Directives

Supply Chain Ontario's Broader Public Sector Procurement Directives has comprehensive policies that incorporate integrity provisions for those that want to contract with organizations in Ontario's Broader Public Service. The provisions apply to publicly funded institutions other than government ministries, including hospitals, school boards, colleges and universities, community care access corporations, and any publicly funded organizations that received public funds of \$10 million or more in the previous year. The directive includes comprehensive rules for all covered organizations based on the core principles of accountability, transparency, value for money, quality service delivery, and process standardization. The directives cover a wide range of mandatory procedures and policies including rules for segregation of duties, thresholds for different means of procurement, transparency with respect to bid qualification and evaluation and award criteria, and dispute resolution.⁹

⁹ Government of Ontario, Broader Public Sector Procurement Directive: <https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/english/bps-procurementdirective>



3. PRE-CONTRACTUAL PHASE

The pre-contractual phase includes the planning and defining of procurement requirements up to the issuance of a bid solicitation.

This phase of the procurement process can be vulnerable to those wishing to manipulate a procurement for their own personal interest. This may include initiating unnecessary procurement processes, developing requirements that favour certain suppliers at the expense of others or structuring the type of procurement method to avoid oversight measures.

Implementing integrity measures at this phase of the procurement cycle increases transparency in decision-making and minimizes opportunities for manipulation of the process by introducing checks and balances to identify risks to help ensure the responsible use of public funds.

This section of the Guide provides examples of measures and tools that support integrity at key steps in the pre-contractual phase, including:

- Completion of a Needs Assessments
- Oversight
- Selecting a Procurement Method
- Establishment of Award Criteria

3.1 Completing a Needs Assessment

Conducting a needs assessment is a crucial step in planning a procurement. A needs assessment is the process of identifying the scope, and requirements for the procurement. The needs assessment stage of the procurement process can be vulnerable to interference from those wishing to manipulate a procurement for their own personal interest. This interference could result in the misappropriation of public funds through the initiation of unnecessary procurement processes, expanding the scope of the procurement beyond what is required,

or overinflating the costs. A thorough needs assessment helps mitigate these risks by ensuring that the correct requirements for the procurement are identified, so that the best procurement methods can be selected and overall value for money can be achieved.

Steps to consider in conducting a needs assessment include:

Assess the Need for the Procurement

- Clarify why the procurement is required or the problem that needs to be addressed.

Gather Information

- Gather information on the industry, goods, or services needed. This can be done using market studies, database resources, subject matter experts, and consultations with the private sector.

Use Validation Systems Independent from the Decision-Makers

- Ensure that decisions to launch a procurement are made by more than one individual.
- Conduct an independent validation of the process.
- Consult representatives from end-user organisations, subject matter experts, industry and the public.

[OECD Principles for Integrity in Public Procurement](#)

When completing a needs assessment, oversight and the standardization of processes reduces opportunities for fraud, corruption and other misconduct during the procurement. A careful identification of needs contributes to a clear procurement plan which also assists in determining the relevant award criteria. Once a thorough needs assessment has been conducted, the procurement budget and plan can be determined, and from there, the award criteria, and procurement method can be selected.



3.1.1 Cross-Canada overview

All jurisdictions in Canada complete a needs assessment prior to proceeding with a procurement process however the degree to which practices are standardized and independently monitored varies across jurisdictions. The use of checklists and templates is common among jurisdictions to ensure that specific questions and considerations are not overlooked.

There is a general trend towards placing greater focus on value for money in procurement across jurisdictions. This has resulted in needs assessments that are increasingly focused on identifying the core problem to be solved by the procurement, rather than focusing on particular products or identifying specific technical requirements. Vendors are able to propose innovative solutions to the problem and introduce new technological solutions that the contracting authority may be unaware of. As a result of the unpredictability added to the process, opportunities to manipulate the procurement process at this stage are reduced. Most trade agreements also include provisions to ensure that solicitations do not include unnecessarily rigid requirements that could be used to favour certain suppliers or exclude others.

3.1.2 Practices to highlight

3.1.2.1 *British Columbia – Templates and Checklists*

British Columbia has created a [Corporate Needs Assessment Template](#) to support purchasing organizations in their needs identification for future contract. The template outlines the key criteria that need to be considered, including the objectives of the procurement and the desired outcome, clearly defined deliverables, and stated requirements for human resources and qualifications.

In addition, British Columbia has created a [Capital Procurement Checklist](#), which provides a comprehensive list of minimum expectations and requirements for publicly financed capital construction undertaken by provincial public-sector agencies. The Checklist spans the whole lifecycle of a procurement and is a resource to help purchasing organizations apply the relevant policies and procedures while providing an additional level of detail and assurance in order to meet the objectives of fairness, openness, competition, and transparency in the procurement process.

3.1.2.2 *Saskatchewan – Best Value Procurement Policy*

The Government of Saskatchewan has outlined its commitment to using a best-value approach in procurement in its [Best Value Procurement Policy](#). The best value approach means that procurements will be structured in a way that considers factors beyond price when

determining which proposal provides the greatest overall benefit. While price remains a fundamental component of any procurement, public entities are encouraged to consider other factors, such as timing and resource considerations, in developing the evaluation components of the procurement opportunities which assists in reducing opportunities for suppliers to engage in bid-rigging.

Best value in procurement may also be achieved through:

- procurements that are outcome or performance based and encourage vendors to propose innovative and value-added solutions
- considering opportunities to participate in cooperative procurement opportunities with other public entities and jurisdictions
- early supplier engagement and industry consultations to understand market capacity
- vendor performance management

3.2 Oversight

Proper oversight during the procurement process promotes accountability by ensuring the consistent application of relevant legislation, policy and integrity measures. Oversight may be done through external bodies as well as internal checks and balances.

External oversight may come from independent third parties outside of the procurement agency that assess whether the procurement body is complying with its legislative, regulatory, policy and-or contractual obligations within its procurement functions. These external bodies may take the form of parliamentary committees, a jurisdictional auditor general, independent trade tribunals, or the engagement of private sector monitors or fairness officials, among others. In some cases, such as in the use of fairness officials, independent third parties are hired from an outside company to oversee the procurement process. Fairness officials (often referred to as fairness monitors, fairness advisors, or fairness commissioners) provide independent assurance that procurement authorities are conducting their activities in a fair, open and transparent way. Fairness officials are expected to observe all or part of a business activity and provide impartial opinions on the monitored activities.

Fairness monitoring programs protect the interests of both the client departments and taxpayers by identifying and resolving fairness issues as they arise. Fairness monitoring also provides an additional level of assurance to bidders and to the public that procurement is being carried out in a fair, open and transparent manner.

The Role of Fairness Officials

As independent observers, fairness officials monitor work for the benefit of all stakeholders in the procurement process. They identify and address issues early, making processes run more efficiently.

This allows governments to procure goods and services more quickly with fewer problems, which supports effective use of tax dollars, while reassuring bidders that the process is open and transparent.



Internal oversight refers to measures that are embedded into an organizations procurement processes via frameworks or policies that ensure prudent use of public funds and integrity in the procurement process. This can include internal auditing functions, internal review committees and departmental oversight functions.

A key component of internal oversight in the procurement process is the adoption of appropriate controls to ensure the responsible use of taxpayer funds. Financial controls, such as the segregation of duties, access controls and setting appropriate levels of authority for approvals can significantly aid in mitigating risks related to fraud and misappropriation of funds. Ensuring that at least two individuals are involved in decision making throughout the procurement process is another important requirement. This may take the form of double signatures, cross-checking, and dual control of assets. This is sometimes referred to as the “four-eyes principle”, meaning that certain activities must always be approved by at least two people. Likewise, all bids should be assessed in a transparent way involving at least two people, and information should be officially disclosed and recorded.

3.2.1 Cross-Canada overview

Financial controls such as the separation of contractual and financial signing authorities, and requiring increased levels of approval for procurements based on their size, complexity and level of risk, are common among FPT members. Periodic audits by jurisdictional auditor general offices and by internal audit functions are also commonly required by Canadian jurisdiction.

In Canada, the use of fairness official and independent third parties to oversee the process is most common in high-value, complex, and/or sensitive procurement processes. For example, Saskatchewan engages fairness monitors on contracts valued over \$50 million but senior management has discretion to bring in fairness monitoring services on contracts with significantly lower values when there are political or socially sensitive issues involved. Similarly, at the federal level, policies and guidelines require that high-dollar value projects that require ministerial or Treasury Board approval, such as major crown projects and complex or high-risk procurement processes, must be considered for fairness monitoring.

3.2.2 Practices to highlight

3.2.2.1 Nova Scotia – Procurement Compliance Risk Management Framework

The Province of Nova Scotia's Procurement Branch¹⁰ is moving forward with a *Procurement Compliance Risk Management Framework* that will focus on governance and accountability. The Framework will include the development and application of policies and procedures, training and awareness initiatives, risk assessments, as well as ongoing monitoring, testing and reporting on the effectiveness of the program to support continuous improvement. The Framework, which is in the early stages of development, will assist public sector entities in Nova Scotia to better understand their risk exposure and maintain compliance in all areas of procurement. The Framework will be the mechanism used by Nova Scotia to ensure compliance with applicable regulations, policies and procedures while ensuring accountability and minimizing the risks in the process.

The key objectives of the *Procurement Compliance Risk Management Framework* are to:

- clarify the roles and responsibilities of those involved in the procurement process
- strengthen the Nova Scotia Sustainable Procurement policy and procedures that guide day-to-day operations
- align compliance and risk management
- set the compliance risk landscape
- connect learning and development to the management of compliance
- increase the quality of business processes through continuous improvement
- build a culture of awareness through training and outreach
- be comprehensive and customizable to meet business requirements and procurement trends
- insert itself into the day-to-day operations
- change behaviours

3.2.2.2 British Columbia - Public Interest Disclosure Act (PIDA)

The [*Public Interest Disclosure Act \(PIDA\)*](#) is British Columbia's whistleblower protection legislation. PIDA provides a safe, legally protected way for current and former British Columbia public sector employees to report serious or systemic issues of wrongdoing to their supervisor, a designated officer in their organization, or to the Ombudsperson.

¹⁰ A branch of Service Nova Scotia

PIDA defines wrongdoing as conduct that occurs in or relating to a ministry, government body or office of the legislature that is:

- a serious act or failure to act that, if proven, would be an offence under the laws of British Columbia or Canada
- an act or failure to act that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions
- a serious misuse of public funds or assets
- gross or systemic mismanagement
- knowingly directing or counselling a person to commit wrongdoing described above

PIDA also prohibits people from retaliating against employees who speak up about potential wrongdoing in the public sector. PIDA prohibits reprisal against employees who report wrongdoing, ask for advice about reporting wrongdoing, or cooperate with an investigation.

Current and former public servants can get advice, without fear of reprisal, from their supervisor, designated officers, including ethics advisers, lawyers, union representatives, employee association or the Ombudsperson.

3.2.2.3 Ontario Fairness Monitoring and Evaluation Criteria

Fairness monitors are often engaged during the bid evaluation phase; however, Ontario also uses fairness monitors during the development of evaluation criteria. This practice allows the contracting authority to ensure that the evaluation criteria are developed in a fair, transparent and open way from the outset. By including fairness monitors at an early stage in the procurement process, the quality, consistency, and objectivity of the criteria used in evaluating bids is increased. When selecting a fairness monitor, Ontario matches the expertise needed with the requirements of the contract.

3.2.2.4 Canada – Fairness Monitoring and Impartiality Declarations

At the federal level, PSPC engages the services of fairness monitors to obtain independent validation of the fairness of procurement activities. PSPC policies and guidelines require that high-dollar value projects that require ministerial or Treasury Board approval, such as major crown projects and complex or high-risk procurement processes, must be considered for fairness monitoring. A request for fairness monitoring can also be submitted for procurement of services of any value, if the procurement is considered highly politically or socially sensitive, such as military procurements or processes that will likely result in legal challenges.

To ensure impartiality, fairness monitors must be completely independent of the government and all other parties involved in the procurement process. Fairness monitors must sign an impartiality declaration prior to the procurement.

The Government of Canada's Fairness Monitoring program helps to promote the public's trust in the public procurement process by providing independent validation that the process is being carried out in a fair and impartial manner.

3.3 Selecting a Procurement Method

There are three main procurement methods: competitive, limited competitive, and non-competitive. The choice of procurement method is highly dependent on the requirements identified in the procurements' needs assessment.

Competitive procurement involves opening the procurement process for all potential suppliers to bid. Limited competitive processes occur when a small number of suppliers are invited to submit a tender, allowing some competition, but only from an identified pool of candidates. Non-competitive procurement, also known as "sole-sourcing," occurs when a supplier is identified and chosen for the procurement without other suppliers having been given the opportunity to bid. While typically the lowest dollar value, non-competitive processes can pose a higher risk to integrity because they are the least transparent of the three types of processes.¹¹

Competitive procurement options promote competition and transparency and can lead to better value for money. Generally, selecting the most competitive option will minimize the risks of the use of unethical business practices in the procurement process. However, there are times when less competitive or non-competitive options may be more appropriate, such as low-value and low-risk procurements where engaging in a full competitive process may not be worth the time it takes to undertake them, or in cases of emergency where time doesn't allow for a competitive process. Non-competitive procurements can offer more flexibility and a quicker turnaround time between needs definition and contract fulfillment.

Non-competitive contracts are most often used in the following cases:

- low-risk and low-value contracts
- highly confidential contracts (national security / law-enforcement operations information)
- in cases of extreme urgency or emergency

What Risks Are Associated With Non-Competitive Contracts?

- Abuse of non-competitive procedures, such as contract-splitting
- Abuse of extreme urgency
- Untested continuation of existing contracts
- Uneven playing field for bidders

¹¹ OECD, Principles for Integrity in Public Procurement, p. 53:
<https://www.oecd.org/gov/ethics/48994520.pdf>

- to ensure the protection of patents, copyrights, or other exclusive rights
- technical or continuity in product purposes, and
- lack of bids submitted.

Ultimately, the selected method should fulfil the organization's operational requirements and achieve value for money, while complying with all legal requirements and trade agreements.

Steps in choosing limited or non-competitive procurement options:

When choosing limited or non-competitive procurement options, precautionary measures can be taken to promote transparency. The following measures can help to minimize the risks associated with limited or non-competitive tendering options:

- Clearly defining procurement requirements
- Providing a credible and documented justification for selecting to use a non-competitive contract
- Identifying the authorized approval personnel
- Frequently reviewing or auditing the results of non-competitive processes
- Publishing the criteria used to determine which procurement method to use and the expected terms of the contract
- Publishing the contract agreement following the award

[*OECD Principles for Integrity in Public Procurement*](#)

3.3.1 Cross-Canada overview

As signatories to the [*Canadian Free Trade Agreement*](#) (CFTA), all Canadian jurisdictions must respect their obligations regarding open and transparent competition. Although intended to increase intra-provincial and intra-governmental trade, the CFTA has had a large impact on the implementation of measures that support integrity across jurisdictions. With notable exceptions for atypical circumstances such as emergency, security and confidentiality, the CFTA sets maximum monetary threshold amounts for using non-competitive processes and places additional requirements for limited competitive processes. The CFTA applies to procurement at different thresholds for core government ministries, crown corporations, and municipal and local governments. The CFTA also requires that a justification be provided for the use of non-competitive contracts.

A number of additional trade agreements further restrict the ability to use limited tendering processes. For example, the New West Partnership Trade Agreement (NWPTA) between the governments of British Columbia, Alberta, Saskatchewan, and Manitoba drops the threshold for covering procurement to \$10,000 for goods, \$75,000 for services and \$100,000 for construction.

All jurisdictions have policies and procedures in place regarding non-competitive contracts that outline the different types of procurement methods, when they should be applied, applicable thresholds, and level of authority required. Internal policies often establish thresholds that are significantly lower than thresholds mandated in trade agreements and set out clear circumstances outlining when officials may diverge from protocols.

3.3.2 Practices to highlight

3.3.2.1 Nova Scotia – Alternative Procurement Practices (ALTP)

The [Nova Scotia Procurement Protocols](#) explain the levels of authority required for all types of contracts, and specifies the circumstances under which non-competitive processes (referred to as Alternative Procurement Practices) are justified. The protocols clearly set out the approval process, justification and documentation required to commence a non-competitive process. Nova Scotia is also developing an ALTP Circumstance Guide, which will further assist users to make appropriate decisions about using non-competitive processes.

As of the fall of 2019, the Government of Nova Scotia has implemented CTFA requirements that state that the information for contracts awarded using alternative procurement circumstances be publically posted. An [ALTP Awards page](#) has been added to the [Nova Scotia Procurement Web Portal](#) to share award information on alternative procurements for all public sector entities. Like the Tenders Notices page, the ALTP Notices page is accessible to the public.

3.4 Establishing Award Criteria

The development of award criteria can be particularly vulnerable to outside influence which increases the risk of misconduct. Conflicts of interest between suppliers and procurement officers can lead to unfair practices resulting from collusion, bribery, or kickbacks. Collusion can take the form of purposeful exclusion of qualified bidders by defining requirements or award criteria too narrowly, or by establishing unreasonable bid specifications and requirements. Collusion may also involve the sharing of sensitive internal information with selective bidders, which may provide them an unfair advantage. Similarly, overly broad requirements can be used to qualify otherwise unqualified bidders.

Risks Associated with Establishing Award Criteria:

- Technical specifications that are tailored for one company.
- Specifications that are too vague or that aren't based on performance requirements.
- Selection and award criteria that are not clearly and objectively defined.
- Criteria that are not established in advance.
- Unauthorized release of information.

Well-developed requirements and award criteria that are transparently shared with all bidders and applied uniformly help to prevent opportunities for collusion and corruption in the awarding of procurement contracts.

Award criteria includes both mandatory and rated criteria. When applicable, criteria for both should be listed in the bid solicitation document, along with an explanation of how the criteria will be weighted or assessed. Mandatory criteria are the minimum requirements that a supplier must meet for its bid to be considered and can include such things as licensing requirements, requirements for delivery dates or condition upon delivery, or essential minimum qualifications or experience of proposed personnel.

Rated criteria are used to assess elements of a bid on a scale such as knowledge and experience (over and above the minimum required to qualify), or benefits to the local economy of the submission (where permitted by trade agreements).

To further promote integrity in procurement, the OECD recommends including criteria that require potential suppliers and contractors to show evidence of anti-corruption policies and procedures and to contractually commit them to comply with anti-corruption standards. An example of this could be requiring potential suppliers to sign a declaration of integrity, in which the supplier certifies that they have not previously engaged in corrupt activities. Including award criteria in the bid solicitation documents and posting them publicly for potential suppliers to review adds a level of transparency to the process, which minimizes risks of collusion at this stage.

Steps that can be taken to promote integrity in establishing award criteria:

- Establish award criteria that are clear, comprehensive and objectively defined using a thorough and transparent process. This can be done through consultations and market analysis
- Publicly post award criteria when possible
- Provide a way for suppliers to seek clarification on award criteria as well as a written record of the responses to promote transparency

[OECD Principles for Integrity in Public Procurement](#)

3.4.1 Cross-Canada overview

Across Canada, developing award criteria to evaluate bids in public procurement generally follows established internal procedures and policies developed by the procuring agency. The Canada Free Trade Agreement and other regional trade agreements also include standards for developing requirements and award criteria, as well as a requirement to publicize them. Most jurisdictions have adopted these measures in internal policies as well. For example, the Yukon requires evaluation criteria to be fully developed and available in requests and only those criteria can be used in the evaluation process.¹²

Depending on the complexity or monetary threshold of the contract, some jurisdictions use technical advisors or fairness monitors to help public procurement staff develop award criteria. For example, Nunavut regularly calls on independent technical experts to help develop award criteria for highly technical procurements. Procurement authorities in other jurisdictions work closely with their clients, who are often the subject matter experts, to develop the requirements and bid award criteria to ensure they accurately respond to the needs assessment.

3.4.2 Practices to Highlight

3.4.2.1 *Yukon Electrical and Mechanical Bid Depository*

The Yukon Government requires that, for construction projects with an estimated value greater than \$2.5 million that include the use of mechanical or electrical sub-trades, a bid depository operated by the [Yukon Contractors Association](#) must be used. The purpose of utilizing the bid depository is to protect the sanctity of bidding by making provision for the reception of sealed bids from trade contractors and the delivery of firm quotations in writing to general contractors. This process reduces opportunities for collusion and “bid shopping”, where a general contractor discloses the price of one sub-contractor to another in order to obtain a lower price.

3.4.2.2 *Canada – Canada Free Trade Agreement (CFTA) Provisions*

The Canada Free Trade Agreement forbids overly restrictive specifications in award criteria and instead calls for technical specifications to be based on the performance of the proposed solution in meeting the functional requirements of the tender and requires that award and tender documents contain detailed evaluation criteria.

¹² Government of Yukon, Procurement Regulations: http://www.gov.yk.ca/legislation/regs/oic2013_019.pdf



4. CONTRACTUAL PHASE

Even with thoughtful planning and execution at the pre-contractual phase, risks to integrity can still arise at the contractual phase. Some problems only come to light at the contract award phase which includes the bid evaluation and selection process, the process of awarding contracts, as well as mechanisms for dispute resolution. For example, the quality and quantity of bids can be affected if bidders don't have consistent access to information, and conflicts of interest can negatively affect evaluation and approval decisions.

The bid-solicitation process can also be manipulated to cause the process to no longer be competitive. For example there may be insufficient information in the invitation to tender or inconsistent access to bid requirements and award criteria, which may impact the quality and quantity of bids, thereby reducing overall competition.

Similarly, the bid evaluation process may be manipulated to favour certain vendors by evaluating bids on something other than the standard criteria, or not applying sufficient due diligence to identify misrepresentations and false statements.

The contract award phase is also vulnerable to collusion among bidders where suppliers cooperate for their mutual benefit to the disadvantage of the procuring organization by employing unethical business practices such as bid rotation schemes, price fixing, and/or bid suppression schemes.

What Risks Occur at the Contract Phase?

- Inconsistent access to information in the invitation to tender, which impacts the quality and quantity of bids
- Lack of competition or collusive tendering, which results in inadequate pricing
- Conflicts of interest that lead to bias and corruption in the evaluation and approval process
- Lack of access to document about the award procedure

[*OECD Principles for Integrity in Public Procurement*](#)

This section of the Guide provides examples of integrity measures at the contract award phase, including specific approaches that apply to:

- Bid Evaluation
- Assessing the Integrity of Vendors
- Awarding Contracts
- Dispute Resolution

These measures strengthen integrity by minimizing opportunities for wrongdoing and introducing additional checks and balances to identify risks and address concerns.

4.1 Bid Evaluation

The process of evaluating and awarding bids varies according to the needs of each procurement process and the procurement method selected. As there is no competition in sole-source contracts, the evaluation of bids only applies to competitive and limited competition procurements.

Procurements should be awarded based on the previously developed and defined criteria, which are publicly posted at the time of the bid solicitation. The CFTA provides requirements for publishing notices of intended procurements, tender notices and the award criteria, and stipulates that awarded contracts must be published within 72 days after the award date.

An online e-procurement approach promotes transparency throughout the whole procurement lifecycle by publicly posting the award criteria, procurement guidelines, and the winning bidder. Online e-procurement systems can standardize the procurement process and provide real-time access to information for all potential suppliers, allowing them to track information and monitor the procurement process. Providing an easy way to access information can also limit unnecessary contact between procurement officials and suppliers. In some cases, e-procurement systems are being used to provide data to analyze procurement practices, allowing governments to find patterns to help improve the procurement process and controls, as well as detect irregularities.

Steps that can be taken to promote integrity in bid evaluation include:

- Ensuring that bid information submitted by suppliers is kept secured and confidential
- Following clearly defined procedures, policies and criteria to guide the evaluation process
- Producing a formal report of all the tenders received before passing them to the officers responsible for their evaluation
- Ensuring that evaluations of tenders are undertaken by at least two people, and sometimes a committee or team, depending on the size and complexity of the procurement
- Evaluating bids using only the established evaluation criteria
- Implementing mandatory disclosure of conflict of interest for evaluation officials
- Preparing a written report on the evaluation of bids to be signed by the evaluation officers/committee

[OECD Principles for Integrity in Public Procurement](#)

4.1.1 Cross-Canada overview

Most jurisdictions use bid evaluation committees or review panels to evaluate competitive bids. Typically, these committees have at least three individuals with a combination of experience in procurement, technical expertise related to the process, and a representative from the procuring organization. The committee evaluates the bids against the established award criteria.

It is standard practice for bid evaluations in Canada to be undertaken using a two-envelope system in which the technical merits of the bid are evaluated prior to reviewing the financial component of the bid. This helps ensure that lowest price is not the sole factor considered in the bid evaluation, which reduces the risk of bid-rigging and allows for consideration of value for money.

4.1.2 Practices to highlight

4.1.2.1 Québec – Bid Evaluation Process

To promote neutrality and objectivity when assessing the quality of bids in the Government of Québec's procurement processes, selection committee secretaries are appointed by the procuring body to coordinate selection committees for public tenders. The secretaries must receive specialized training offered by the Secrétariat du Conseil du trésor du gouvernement du Québec (SCT) before being accredited.

The Selection Committee operates independently from the procurement officers. Following the bid evaluation, the selection committee makes recommendations to the procuring organization about the winning bid based on the results. All selection committee members must sign a declaration stating that there is no conflict of interest before being assigned to evaluate a bid. Committee members are not involved in the file and have no prior access to information about the tender. Moreover, Québec law forbids suppliers bidding on contracts from interacting with selection committee members. Project officers, directors of the procuring organization, and members of its board cannot sit on the selection committee. To encourage fairness and impartiality, the selection committee must also include a member external to the public body. Fairness monitors can also be called upon where required.

By using a selection committee with members independent of the procurement organization and separate from the development of award criteria, opportunities for an individual to manipulate the process are significantly reduced.

4.2 Assessing the Integrity of Vendors

Assessing the integrity of vendors prior to entering into a contract allows the contracting authority to assign the correct risk profile to its suppliers, to apply the correct level of due diligence and to employ the appropriate risk mitigation measures. Failing to adequately assess the level of risk attributed to a contract, supplier, or process could lead the procuring agency to select the incorrect risk-mitigation measures. This could result in applying overly burdensome measures to low-risk contracts or insufficient measures to high-risk contracts and contractors, leaving the procurement organization vulnerable to unethical business practices.

If an assessment has been conducted to verify the integrity of a vendor, and does not meet the standards of integrity for a given jurisdiction, the supplier may be suspended or debarred from being awarded public contracts. Suspensions and debarment can have significant reputational and monetary impacts on a supplier. Debarring a supplier due to unethical conduct demonstrates a Government's

commitment to upholding integrity in procurement. It can also contribute to upholding public trust in the government procurement process, discouraging unethical business practices, and encouraging suppliers to adopt corporate compliance programs, thereby helping to mitigate risk while supporting a fair and open marketplace.

4.2.1 Cross-Canada overview

All FPT partners conduct some level of due diligence to verify the integrity of suppliers prior to entering into contracts, however the approach to determining the business integrity of suppliers varies across Canada. A number of jurisdictions employ a risk-based approach based on either risks associated to the particular procurement or the bidders. Certain jurisdictions use publicly available information to assess whether suppliers represent higher risks based on prior or suspected involvement in criminal activity, in which case enhanced due diligence measures may be applied.

The governments of Nova Scotia, Ontario, Prince Edward Island, Manitoba, Saskatchewan, Alberta, British Columbia, Yukon, and the Northwest Territories all have provisions to disqualify suppliers from contracting or to terminate contracts under certain circumstances. Ontario and British Columbia, for example, use standard contract conditions that allow them to disqualify suppliers based on prior criminal convictions, for engaging in unethical bidding, breaches of conflict of interest, bid-rigging, prohibited lobbying, or failing to comply with corporate tax compliance requirements. Manitoba has contract provisions to disqualify bids if, among other things, the company is debarred by another public entity in Manitoba or is found guilty of an indictable offence.

The governments of Québec, New Brunswick, and Canada have what are commonly referred to as debarment regimes. Although the parameters of each regime differ (e.g., reasons for debarment, application of the regime, debarment periods, compliance requirements, and administration), each aims to ensure that contracts using public funds are not awarded to unethical suppliers. Nova Scotia is also developing a debarment regime that may disqualify an entity for up to five years based on unethical practices related to contracting and procurement.

Of note, the CFTA explicitly allows parties to exclude suppliers based on, among other things, false declarations, final judgments in respect of serious crimes or other serious offences, professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier, or failure to pay taxes.¹³

¹³ Canadian Free Trade Agreement, Article 507 (4):
<https://www.cfta-alec.ca/canadian-free-trade-agreement/>

4.2.2 Practices to highlight

4.2.2.1 Ontario – Security Clearances

Ontario has a series of measures in their public procurement process to increase their capacity to screen-out potential contractors that pose a higher risk. This verification obliges bidders to increase their own internal due diligence to ensure that their employees and sub-contractors are of good character; otherwise, it could threaten or impair the ability of the main contractor to obtain and keep the contract they seek to win. The measures include:

- conflict of interest declarations by contractor
- contractor security screening processes
- security screening conducted on company and beneficial owner
- risk assessment conducted on all contracts, and
- due diligence based on risk level of risk assessed for the contract

4.2.2.2 Federal Security Provisions – Contract Security Program

To ensure the integrity of the federal procurement process and confirm that suppliers doing business with the Government of Canada are reliable, trustworthy, and in the case of classified contracts, loyal to Canada, suppliers awarded government contracts with security requirements must be registered and security screened at the appropriate level through the Contract Security Program (CSP). The CSP plays a vital role in protecting the national security interests of Canada and its allies by contributing to the safeguarding of sensitive information and assets entrusted to private sector companies or individuals through government contracting and/or participation in multinational co-operative programs.

To ensure that sensitive information is handled appropriately during all phases of the contracting process, organizations and their employees, including key senior officials, may be subject to additional evaluation tools and assessments such as foreign ownership, control or influence (FOCI) evaluations, guidance on aftercare practices for personnel security clearances, oversight and compliance activities including inspections of facilities, investigations, training, and international industrial security activities and best practices.

4.2.2.3 New Brunswick – Procurement Act and General Regulations

New Brunswick has implemented a debarment process under its [Procurement Act and General Regulations](#). Under the Act, a supplier is disqualified from provincial procurement activities if they have been convicted of offences under six federal statutes (including the Criminal Code, Corruption of Foreign Public Officials Act, and Controlled Drugs

and Substances Act). Offences which will result in debarment include: intimidation in connection to a public contract, threats and retaliation against employees, criminal negligence causing injury or death (in connection with a public contract), and obstruction of justice. In most cases, debarment can last for a maximum of five years, proportional to the seriousness of the offence. A supplier may also be disqualified for significant or persistent deficiencies in fulfilling or performing substantive obligations under a prior contract, provided there is supporting evidence. Potential debarment provides a significant deterrence to unethical business practices as suppliers can find themselves shut out of lucrative government contracts if convicted of an offence.

4.2.2.4 Québec – Authorization to Contract

The Government of Québec has implemented a risk-based due diligence process to evaluate the integrity of suppliers. Suppliers bidding on service contracts with any public or municipal body or government corporation above \$1,000,000, or construction and public-private partnerships above \$5,000,000, must first obtain an authorization to contract from the Autorité des Marchés Publics (AMP). This authorization also applies to subcontractors.

To obtain authorization, suppliers must meet high standards of integrity in line with public expectations to do business with the province of Québec. As part of the authorization process, the company, along with its beneficial owners, must undergo a number of background checks related to integrity conducted by a specialized unit of the Unité Permanente Anti-corruption (UPAC). This authorization must be renewed every three years.

The AMP considers, among other things, charges or convictions for offences set out in the [*Act Respecting Contracting by Public Bodies \(LCOP\)*](#). Companies established outside Québec must complete and provide a good conduct certificate, sworn statement, criminal record verification or equivalent document as part of their authorization application. The AMP has discretion to refuse to grant or renew an authorization, and it may revoke an authorization if a company no longer meets the standards of integrity.

A company which the AMP refuses to grant or renew authorization also becomes ineligible for public contracts and is listed in the register of entities ineligible for public contracts (RENA) for a period of up to five years. As soon as the company's name appears in the RENA, it can no longer conclude public contracts, regardless of their value. The RENA also lists companies that have been found guilty, by a final judgment, of an offence (federal, provincial law, etc.) listed in the LCOP. These companies become ineligible for business with the government and cannot obtain public contracts or subcontracts, regardless of value, during the period of inadmissibility.

Public and municipal bodies, as well as government corporations must consult the RENA to ensure that the company is not listed there before entering into a contract with it. Contracting companies must do the same with their subcontractors.

4.2.2.5 Canada – Integrity Regime

The Government of Canada's Integrity Regime is a federal government-wide and policy-based debarment system designed to ensure the integrity of federal contract and real property transactions. The Regime applies to most contract or real property agreement with a value greater than \$10,000.

A supplier who has been charged with an offence listed in the Policy, or a similar offence in another jurisdiction, may be suspended from receiving contracts or real property agreement awards. Offences covered under the Policy are related to white-collar crime such as corruption, bribery, bid-rigging and fraud against Her Majesty. A supplier who is convicted of an offence, or has an affiliate who is convicted of an offence, listed in the Policy, may be declared ineligible for 10 years.

Public Services and Procurement Canada administers the Regime on behalf of the Government of Canada and works actively with federal procurement and real property officers to verify supplier compliance with the Regime. Verifications of companies and individual suppliers are requested by procurement and real property officers through a web-based portal, and are processed using a centralized database that houses information on specific convictions or charges.

Similar to New Brunswick's debarment process, the Government of Canada's Integrity Regime can act as deterrent from suppliers engaging in misconduct due to the loss of ability to bid Government of Canada contracts and the public nature of the determination.

4.3 Awarding Contracts

The integrity of a procurement can be maintained by adhering to a number of principles. For example, awarding contracts in a timely and transparent manner, and publicly posting the award decision along with its justification, on the contracting authority's website or elsewhere, reinforces transparency as a value being adhered to. Similarly, where a contract is the result of a sole-source or limited-tender procurement method, the justification and rationale for awarding a contract could also be made public. In addition, successful and unsuccessful vendors can be notified of the outcome of a process, as well as where the contract award information is published. Finally, privacy can be maintained while publishing the grounds for an award by taking care to not disclose commercially sensitive information regarding the bids. The OECD recommends including the type of procurement method used, as well as the highest and lowest offers taken into account in the award of the contract.

Steps to take when awarding a contract:

- Promptly notifying unsuccessful tenderers of the outcome of their tenders, as well as when and where the contract award information is published
- Publishing the outcome of the tendering process in a readily available medium
- In cases where limited tendering was used, a description of the circumstances justifying the use of limited tendering should also be included
- Allowing the mandatory standstill period, where one exists, before the beginning of the contract

[OECD Principles for Integrity in Public Procurement](#)

Following contract award, debriefs should be offered to all unsuccessful vendors which identify the strengths and weaknesses of each of their bids, while still protecting confidential information. Written records should be kept of the debriefing, and if done verbally, recorded as well.

4.3.1 Cross-Canada overview

The CFTA requires that all jurisdictions post key details of applicable bid awards on their public websites. Specifically, a notice of tender must be published no later than 72 days following the award of the contract, with the following information:

- description of goods or services
- name and address of the procuring entity
- name and address of the successful supplier
- value of the successful tender
- date of award
- description of the justifying circumstances in cases of limited tendering

All jurisdictions provide an opportunity for unsuccessful bidders to request a debrief from the procurement officer. Many jurisdictions, including the Yukon, Nunavut, Northwest Territories, Manitoba, Saskatchewan and others, use this debrief as an opportunity to educate bidders on the strengths and weaknesses of their proposal and how to improve their submissions for future bids.

4.3.2 Practices to highlight

4.3.2.1 Nunavut – Contract Award Notification

The Government of Nunavut publishes contract information for all contracts over \$5,000. This dollar value is significantly lower than what is required by trade agreements, and it provides an enhanced level of transparency in the procurement process. The Government of Nunavut publicly shares an annual Contract Activity Report (the Report) which provides clarity and information on important trends in their contracting statistics. The Report raises concerns, identifies trends, and outlines long term trends on government spending. For example, in its annual [Contract Activity Report](#), 2016-2017, the Government of Nunavut proactively reported its concern over the growing number of sole-source contracts being used in the territory. The Government of Nunavut has conducted significant analysis of the factors leading to this situation, openly reported the issue, and is taking steps to ensure more competitive processes are undertaken, whenever possible.

4.4 Dispute Resolution

Following the award of a contract, concerns about the procurement process or the award decision may arise. The availability and use of dispute resolution and review mechanisms can promote confidence in the procurement process and increase the likelihood that the procurement will be carried out in a fair and transparent manner by providing a way for suppliers to have their concerns or complaints addressed. A “standstill period” can be built into a procurement process to allow unsuccessful bidders to challenge a decision before a contract is signed. When disputes do arise, resolving them in a fair and timely manner supports integrity in the process.

When addressing a complaint, it is important that the review processes in place are impartial. Alternative dispute settlement mechanisms, such as an advisory board or complaint body, can be used to avoid formal litigation and reduce the time for resolving complaints. When disputes cannot be resolved informally, a central appeal body such as an ombudsperson should have the necessary independence, and the power to enforce its decisions with adequate remedies.

The following are steps to consider when working to resolve disputes:

- In the case of problems with potential suppliers, make an effort to resolve disputes through negotiation as a first step
- Provide information on how to lodge a complaint related to the procurement process
- Provide an option to use dispute resolution mechanisms before and after the award
- Consider the possibility of using interim measures to enable the prompt processing and resolution of complaints—the possible overriding adverse consequences for the interests concerned, including the public interest, should be taken into account when deciding whether such measures should be applied

[OECD Principles for Integrity in Public Procurement](#)

4.4.1 Cross-Canada overview

The CFTA provides that “parties to a dispute should undertake to resolve disputes in a conciliatory, cooperative, and harmonious manner”.¹⁴ As such, all jurisdictions have dispute resolution practices in place. However, as the CFTA does not dictate how these practices should be structured, they vary among the jurisdictions, with some providing more guidance and formal procedures than others. Some jurisdictions use the dispute resolution process as a coaching tool to help bidders understand how to better position future bids.

4.4.2 Practices to highlight

4.4.2.1 British Columbia — Vendor Complaint Review Process

In cases where vendor complaints are not resolved informally, a supplier can initiate a formal vendor complaint through the [Vendor Complaint Review Process \(VCRP\)](#). The VCRP, which is run independently from the procurement group, provides an accessible, consistent, fair, impartial, and timely review process to identify ways to improve ministry procurements. No compensation awards can result from the outcome of the review. The formal review process is limited to issues of procurement policy

¹⁴ Canadian Free Trade Agreement, p. 105 : <https://www.cfta-alec.ca/>

and procedures. For example, a vendor could initiate a formal complaint about how the evaluation criteria were applied to their submission, but not about the submission's individual scores. Other types of complaints may be addressed using the dispute resolution process outlined in the individual contract or by contacting the Office of the Ombudsperson.

4.4.2.2 Canada – Business Dispute Management Program

Canada's [Business Dispute Management \(BDM\)](#) Program is administered by Public Services and Procurement Canada (PSPC) and provides neutral and confidential resources for suppliers and crown employees experiencing challenges with a procurement or contract where PSPC is the contracting authority. The program receives concerns, enquiries and requests for intervention about business disputes during any phase of the procurement or contract life-cycle.

The BDM program offers a range of flexible alternative business dispute management services, including:

- offering conflict prevention and alternative dispute resolution services to anyone involved in a procurement or contract process
- suggestions for options to manage the business dispute and facilitate communication between parties
- helping parties arrive at a mutually agreed upon resolution
- helping prevent similar issues by identifying potential systemic concerns and providing recommendations to PSPC
- providing outreach and awareness activities

Suppliers or contracting officers may contact the BDM Program at any point during the procurement or contract life-cycle if they are unsure of the next steps to take to address a business dispute, believe they would benefit from the assistance of a dispute resolution practitioner to help prepare for a difficult discussion, or are looking for a contact to help resolve an issue or concern.

4.4.2.3 Canada – Office of the Procurement Ombudsman

The [Office of the Procurement Ombudsman \(OPO\)](#) helps suppliers and federal organizations resolve disputes related to the awarding of particular contracts or proposals. The focus of the OPO is on federal contracts not covered by the CFTA. Suppliers can submit a complaint to the OPO regarding:

- the award of a contract valued below \$25,300 for goods and \$101,100 for services
- the administration of a federal contract, regardless of dollar value

If the complaint meets the criteria in the *Procurement Ombudsman Regulation*, the OPO will launch a review of the complaint and contact the relevant federal organization to request documentation and comments. The OPO has the authority to review systemic issues and provide recommendations to federal organizations to promote fairness, openness and transparency in federal procurement.

ANNEX A: THE OECD PRINCIPLES FOR INTEGRITY IN PUBLIC PROCUREMENT

The [*OECD Principles for Integrity in Public Procurement*](#) are an OECD recommendation created to provide policy guidance to governments regarding the prevention of waste, fraud and corruption in public procurement.

Principles for Integrity in Public Procurement

Principle 1 – Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.

Principle 2 – Maximize transparency in competitive tendering and take precautionary measures to enhance integrity, particular for exceptions to competitive tendering.

Principle 3 – Ensure that public funds are used in public procurement according to the purpose intended.

Principle 4 – Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

Principle 5 – Put mechanisms in place to prevent risk to integrity in public procurement.

Principle 6 – Encourage close co-operation between government and private sector to maintain high standards of integrity, particularly in contract management.

Principle 7 – Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly.

Principle 8 – Establish a clear chain of responsibility together with effective control mechanisms.

Principle 9 – Handle complaints from potential suppliers in a fair and timely manner.

Principle 10 – Empower civil society organizations, media and the wider public to scrutinize public procurement.