January 2026

Critical Trends

The Procurement Office

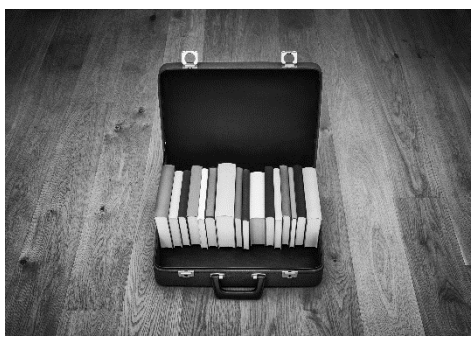
2025 Year in Review

Feature Trend

Reports and Rulings Call for More Training

Compliance and Efficiency

Multiple recent case studies have called for more training to increase compliance and efficiency in the procurement process. For example, Canada's Procurement Ombud stressed that training is essential to procurement process improvements. (see Procurement Ombud Calls for More NRFPs) Alberta's Auditor General found that internal training sessions were critical to rectifying prior trade treaty violations (see Alberta Rectifies Prior Irregularities in Construction Tendering). Toronto's Auditor General identified training as a key element to resolving procurement logjams (see Toronto Audit Calls for More P-Cards and More Training). Conversely, the Canadian International Trade Tribunal cited a lack of training as the reason why the federal government failed to properly advise losing bidders of their bid protest rights. (see Tribunal Urges Government to Notify Bidders of Protest Rights) Similarly, a Newfoundland audit called for more staff training after raising "serious concerns" about procurement practices. (see Audit Finds Multiple Irregularities in Newfoundland Nursing Contracts)



Lessons Learned: The latest case studies prove what we have already known for years. They provide fresh evidence of chronic and systemic issues in Canada's public procurement system. (see Don't Be the Next Case Study)

Costly Delays: An Ontario audit found $1.4 billion in inventory write-offs due to undelivered PPE. (see Ontario Writes Off $1.4 Billion in PPE Inventory) A Newfoundland audit found a flawed "deferred maintenance" scheme. (see Newfoundland Audit Raises University Maintenance Concerns) A New Brunswick audit found chronic maintenance delays in public housing. (see New Brunswick Housing Audit Finds Systemic Maintenance Delays). A Toronto audit found weak records in sewer system delay claims. (see Weak Delay Claim Oversight in Toronto Sewer System Repairs)

Feature Article

Focusing on Fundamentals

The foundations of our public procurement system are crumbling. Long-term neglect, coupled with a lack of coherent strategic direction, is resulting in chronic structural failures at all levels of government in every region in Canada. If they hope to reverse course, public institutions need to focus on the fundamentals of good governance and prioritize the restoration of their procurement operations.

This means implementing good governance practices at the organizational level, adopting more precise procedures for managing the bidding process at the transactional level, and expanding the use of negotiated RFPs to increase the success rates of major projects at the strategic level. (see Forging a Path Forward)

Fundamentals Course

Full-Cycle Due Diligence

Debuting April 2026

Our new Fundamentals of Canadian Government Procurement certificate course debuts in April 2026 and returns in October 2026.

RFx Drafting Course

Leading Practices

Debuting May 2026

Our new RFx Drafting in the Canadian Public Sector certificate course debuts in May 2026 and returns in November 2026.

NRFP Course

Next-Level Innovation

Debuting May 2026

Our new Negotiated RFPs in the Canadian Public Sector certificate course debuts in May 2026 and returns in November 2026.

Paul Emanuelli

Federal Failures Expose Chronic Issues

Provincial Case Studies Reveal Systemic Defects

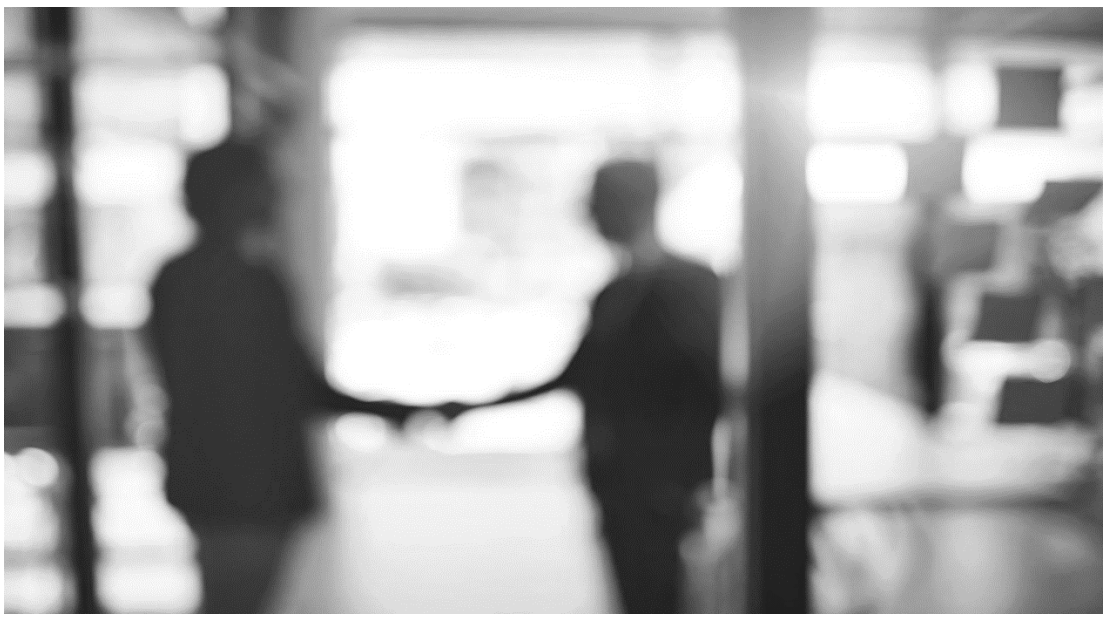
Recent case studies underscore the importance of implementing proper oversight and accountability for all stages of the procurement cycle.

For example, a recent Auditor General of Canada report found major cost overruns and delays in the government's F-35 procurement notwithstanding prior audit recommendations to bolster project planning and coordination. (see Canadian F-35s Face More Delays and Cost Increases) On another major project, a recent Canadian International Trade Tribunal ruling struck down the federal government's attempt to use a non-compliant invitational bidding list for a multi-billion-dollar cloud computing procurement. (see Tribunal Cracks Down on Closed Roster Scheme)

Turning to contract management practices, the Procurement Ombud recently concluded that the federal government's attempt to use a contract extension process to impose onerous amendments on service providers was unreasonable. (see Federal Ombud Finds "Stop-Watch" Amendment Unreasonable). Similarly, another federal audit raised contract management concerns over weak performance monitoring and security screening. That audit also raised value-for-money concerns over sole-sourced contracts and single-bid awards (see Federal Audit Finds Weak Contract Management).

These governance challenges are not limited to the federal sector, with multiple provincial and municipal reports raising similar red flags.

In fact, a recent Newfoundland audit raised "serious concerns" over nursing contracts after finding improper sole-sourcing. (see Audit Finds Multiple Irregularities in Newfoundland Nursing Contracts) A Nova Scotia audit found that the government used an improper "right of first refusal process" to give an unfair preference to existing services providers. (see Nova Scotia Auditor General Rejects "Right of First Refusal" Process). A trade treaty dispute panel accepted a protest over allegations of local preferences in New Brunswick construction contracts. (see Summary Dismissal Rejected in New Brunswick Contract Dispute) Finally, a Manitoba audit found weak oversight over municipal spending of provincial grants. (see Manitoba Municipal Audit Raises Oversight Issues)



Oversight vs. Interference: While elected officials have ultimate accountability for the public institutions they preside over, this does not mean that they should interefere in the procurement decisions of government departments, ministries, agencies and broader public sector entities. However, in 2025, Ontario passed a new law that centralizes provincial cabinet powers to direct preferential procurement practices across the entire Ontario public sector. (see Ontario Doubles Down on Protectionist Schemes, Ontario Recycles Outdated "Cost-Saving" Strategy, and Ontario Needs to Re-Align Priorities) Meanwhile, a Saskatchewan audit called for better oversight in provincial technology projects. (see Saskatchewan Audit Calls for Better Oversight)

Paul Emanuelli

The Specter of Political Interference

Elected Officials Need to Take a "Hands-Off" Approach

Political interference in the procurement process continues to raise institutional governance concerns.

For example, a recent Alberta Auditor General report found that the Minister of Health exercised improper influence over a major health sector procurement and compromised the independence of the government's "arms-length" health agency (see Alberta Audit Finds Provincial Interference in Major RFP).

Similarly, the Supreme Court of Prince Edward Island recently dealt with the allegations of a losing bidder who claimed that the provincial cabinet improperly interfered with contract award decisions under the guise of providing "policy direction" (see PEI Court Rejects Hidden Criteria and Interference Claim. These recent case studies illustrate why public institutions need to find the right balance between institutional oversight and improper interference.

Paul Emanuelli

Weak Conflict Controls Remain a Critical Issue

Recent case studies reveal how many Canadian public institutions continue to struggle in enforcing conflict of interest rules in their procurements.

For example, in Alberta, an independent investigation ordered by the provincial government concluded that two former provincial health agency employees were involved in "obvious" conflicts when they acted for suppliers in major contracts with that agency. The report concluded that the agency's conflict rules needed to be updated to deal with those types of conflicts. (see Report Finds Weak Conflict Rules at Alberta Health Services)

Further, the British Columbia Supreme Court recently dealt with the injunction application of an incumbent air ambulance service provider after the province's health authority failed to remove a conflicted evaluator from an RFP process. While the injunction was denied, the conflict tainted the contract award and forced the agency to conduct a re-evaluation with a new group of evaluators under the supervision of an independent third party (see Flawed Conflict Screening Triggers BC Bid Dispute).

Paul Emanuelli

Aligning RFX Elements

Clockwork Precision

Multiple Moving Pieces: Drafting clear soliciation documents requires the careful coordination of multiple moving parts, including contract requirements, pricing structures, bid compliance standards and scored evaluation criteria.

Recent bid protests put a spotlight on drafting, interpretation and evaluation disputes. In its recent decision in *Canada v. EllisDon Corporation*, Canada's Federal Court of Appeal upheld the award of financial compensation to a bidder who was improperly awarded a contract due to a government evaluation error and then had that contract award revoked.

A prior tribunal ruling found that the government improperly rejected a low bid as non-compliant after mishandling an electronic bid bond and delaying the rectification of that error for a protracted period before revoking the original award. (See Federal Government Liable for Mishandled Bid Bond). In its recent decision in *HP Consultants Inc. v. IIDI*, the Supreme Court of Prince Edward Island rejected a losing bidder's allegations of a hidden "rural presence" criterion after finding that the factor could be reasonably interpreted as falling within the broader "regional development" requirement under the terms of the RFP. (See PEI Court Rejects Hidden Criteria and Interference Claim) In its recent decision in *Bot Construction et al. v. Minister of Transportation*, the Ontario Superior Court of Justice upheld an arbitration decision that awarded a contractor $14 million in extra contract costs after concluding that the costs of handling "excess rock" on a highway expansion project were not included in the scope of the original contract. (See Ontario Ministry Rocked with $14M Extras Award)

Paul Emanuelli

Relying on Bidder Representations

In its recent determination in *Axxys Construction Group v. Department of Public Works and Government Services*, the Canadian International Trade Tribunal diluted the right to rely on bidder representations. By raising a new "red flags" duty, the ruling contradicted the long-standing right established under prior Supreme Court of Canada precedent and imposed a positive duty on government institutions to investigate concerns raised by competing bidders about the representations made by other bidders. This new "red flags" duty opens a Pandora's Box of risk and uncertainty in future bid compliance assessments and contract award decisions. The ruling highlights the importance of adopting formal drafting protocols to ensure clear and defensible bid compliance requirements (see Tribunal Dilutes Right to Rely on Bidder Representations and The Erosion of Federal Regulatory Oversight).

Focusing on Core Principles: Recent bid protests put a spotlight on evaluation disputes that could have been avoided with more precise document drafting and more disciplined evaluation procedures. These new disputes reveal chronic issues that have persisted for decades as public institutions continue to struggle with their basic bidding procedures. (see Chronic Errors Lead to Bid Disputes)

Relying on Legal Tests to Determine the Drafter's Original Intention

Leveraging the Laws of Interpretation

Spotlight on Express Terms

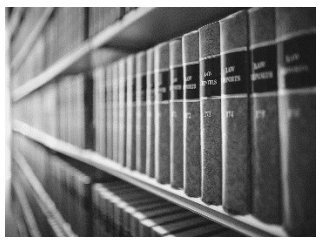
In its recent decision in *Brandt Industries Canada Ltd v EVRAZ Inc NA Canada*, the Court of King's Bench of Alberta dealt with a payment dispute over a cost-plus master purchase agreement for equipment supply and installation at an industrial plant in Red Deer, Alberta. In resolving the payment dispute for the supplier, the court applied what it referred to as the "modern principles of contract interpretation", including the entire document rule, plain meaning principle, reasonable person standard, surrounding circumstances analysis, and factual matrix rule.

The court also applied the current legal analysis for reading in implied contract terms to fill in the gaps left in a contract's express terms. This decision serves as a useful case study for guiding purchasing institutions on how to leverage the laws of interpretation when drafting their solicitation documents, including legal terms and conditions, contract requirements, and pricing structures. (see Alberta Court Leverages Modern Interpretation Rules)

No More Excuses: The Procurement Obmud's new study debunks the myth that legal obstacles prevent the use of Negotiated RFPs, or that these procedures somehow contravene trade treaty rules. As the report illustrates, it's time to stop using false claims of legal barriers as an excuse for systemic intertia. NRFPs have a proven track record of reducing litigation risks while increasing project success rates, which has led to their widespread adoption across the Canadian public sector.

Procurement Ombud Calls for More NRFPs

Federal Inertia Symptomatic of Systemic Innovation Avoidance



In its recent study entitled *Negotiated Requests for Proposal*, the Office of the Procurement Ombud considered whether the federal government should adopt NRFPS as an alternative approach to traditional tendering.

As the report concluded, the NRFP format, which is "widely used by many Canadian provinces and municipalities" offers a "promising alternative to traditional procurement processes" since it enables improved competition, better solutions, and greater opportunities to obtain value and money, while also mitigating "many of the legal risks associated with traditional tendering formats."

However, the report cautioned that using NRFPs would "require a shift in culture, better training for procurement staff on how and when the use of NRFPs is appropriate, and clear rules to ensure fairness and transparency."

As the report noted, NRFPs enable dialogue with suppliers, which can encourage greater participation during a bidding process, help government institutions achieve more value for money, and "improve the overall procurement system." Provincial and municipal officials who were interviewed for the study felt that the use of less flexible traditional tendering formats "places them in a position where they have to reject otherwise valid bids because the bidder takes exception to some of the terms and conditions, or because of minor administrative errors such as not completing mandatory submission forms, missing documentation, mathematical errors, or problems with bid bonds," problems that are addressed through the flexibility of NRFP formats.

With respect to mitigating legal risk, most provincial officials stated that they face "a higher risk of legal challenges, including lost profit claims, when using the Contract A/B tendering approach" with one interviewee stating that "bidders are more prone to complain about a Contract A/B process than an NRFP."

> "NRFPs have a proven track record of reducing litigation risk while increasing project success rates." – Paul Emanuelli

Further, several federal officials stated that "the Contract A/B tendering format is resource intensive and requires a lengthy planning process to define requirements and develop evaluation criteria," and that by denying dialogues and negotiations with suppliers, the government may be leaving lost opportunities for innovation and cost savings on the bargaining table.

The report concluded that the federal government "could reduce the number of lost profit claims by suppliers, encourage innovation by leveraging technology and industry expertise, and further reduce costs by better balancing the assumption of risk between departments and suppliers."