Strategic Procurement Update

Critical Trends

The Procurement Office

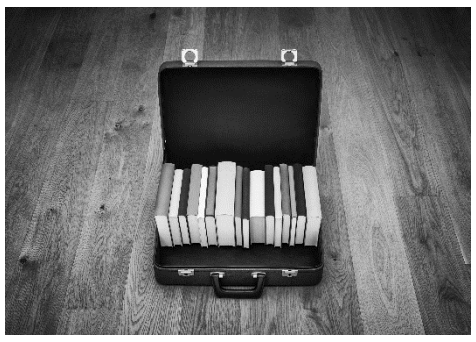
Focus on Strategic Project Planning

Feature Case Study

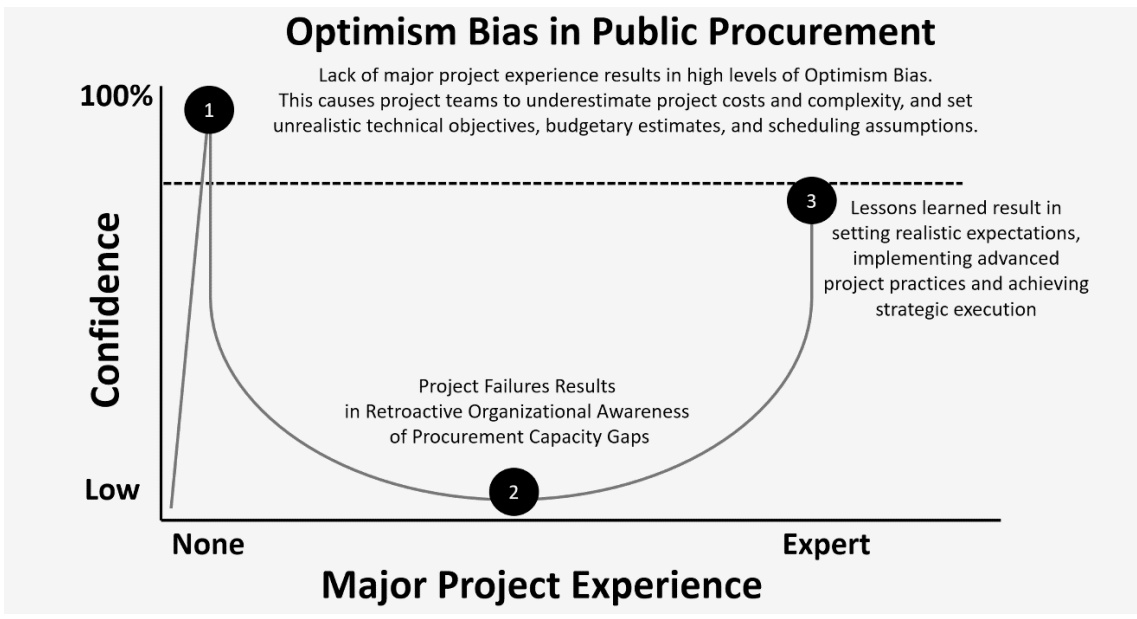
The Adverse Impact of Optimism Bias

A Well-Documented Issue

The adverse impact of optimism bias on major public procurement initiatives is well documented. For example, Olympic Games and similar major publicly funded sporting events have encountered cost-overruns for decades, stretching back to the 1976 Montreal Summer Olympics (see Why Optimism Bias is an Olympic-Sized Problem), through to the 2010 Vancouver Winter Olympics (see $385 Million Cost Overrun in Olympic Project) to the 2015 Toronto Pan-Am Games (see Pan-Am Games Exceed Budget by $300 Million). Interestingly, in 2018, when Calgary City Council put the future of its Olympic bid for the 2026 Winter Olympics to a public plebiscite, 56.4 percent of Calgarians voted against the bid, and only 43.6 percent voted for it even though the Canadian federal government and the Alberta provincial government were offering to match the funding contribution of the City. Apparently, Calgary taxpayers were not convinced that the allocated funds would cover the ultimate costs. In fact, they had significant data in support of their "NO" votes.



Lessons Learned: Multiple case studies illustrate the high-risk of performance failures, cost overruns, delays, and procedural irregularities associated with major public sector procurement projects.



The Flyberg Formula: Underestimated costs + Overestimated Benefits = Project Approvals. As Flyberg warns, "Projects that look best on paper are the projects with the largest cost underestimates and benefit overestimates, other things being equal. But these are the worst, or "unfittest," projects in the sense that they are the very projects that will encounter most problems during construction and operations in terms of the largest cost overruns, benefit shortfalls, and risks of non-viability." The Dunning-Kruger effect, illustrated above for procurement project teams, is defined as "a cognitive bias in which people with limited competence in a particular domain overestimate their abilities."

Feature Article

How Over-Optimism Leads to Project Failures

Project teams are typically measured on whether they meet their project objectives on budget, on time, and by the rules. However, as Danish scholar Bent Flyvbjerg observes, project teams can set themselves up for failure by setting unrealistic objectives.

With highlights from some of Flyvbjerg's recent studies, this discussion explains how delays, cost overruns, and performance failures are the rule, rather than the exception, in major public sector procurement projects, and explains how tainted cost-benefit analyses, optimism bias, and strategic misrepresentation all contribute to the poor planning decisions that lead to these project failures.

In his World Bank policy research paper, *Policy and Planning for Large Infrastructure Projects: Problems, Causes, Cures*, Flyvbjerg attributes project failures in large infrastructure projects to the misinformation provided to government decision-makers during the initial project planning process. As Flyvbjerg explains, this misinformation comes in the form of flawed cost-benefit analyses. In the study, Flyvbjerg asserts that optimism bias and strategic misrepresentation are the main factors behind this misinformation and advises public institutions to address these problems through better incentive structures and improved planning methods.

Training Retreats

Leveraging Lessons Learned

Procurement Training Office

We will be hosting our in-person Strategic Procurement Retreats each October and May at our new training centre.

Governance 2.0

Policy-Protocols-Templates

Procurement Law Office

We are pleased to announce our new 2.0 Policy and Protocols and 5.0 Annotated RFx Templates.

RFx Drafter v. Training

Software or Deeper Learning

Procurement Advisory Office

Orbidder 2.0 goes head-to-head with our 5.0 Annotated RFx Templates and Platinum Training Program.

Paul Emanuelli

Audits Identify Impact of Optimism Bias

Rampant Delays, Cost-Overruns, Operational Failures, and Process Breaches

The adverse impact of optimism bias has been well-documented in multiple major public sector project portfolios.

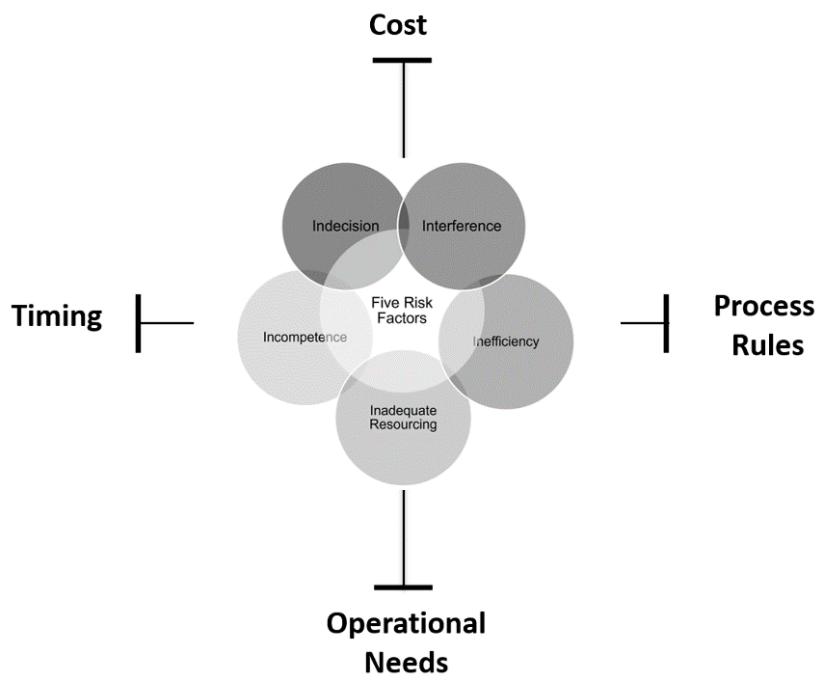
Impacted areas have included military procurements (see Chopper Purchase Plagued by Optimism Bias, Massive Underfunding in UK Military Procurement, Defects, Delays and Indecision in F-35 Program, Poor Planning Causes F-35 Maintenance Problems, UK Battles Ongoing Project Funding Shortfalls, and Delivery Delays Impede Canadian Armed Forces), space system projects (see Optimism Bias Causes Space System Delays, and NASA Projects Face More Delays), and mass transit and rail infrastructure initiatives (see Project Tops $1 Billion After Major Scope Changes, Cost Estimates Go Off the Rails, and Optimism Bias Derails Cost Controls).

Other impacted areas have included government payroll systems (see Funding Shortfall Causes Payroll System Crash) school construction projects (see Delays Cause Construction Project Impasse) production studio projects (see Optimism Bias Impacts BBC Project), and quarry rehabilitation programs (Rush to Spend Overtakes Risk Management).

Notwithstanding these long-understood defects in project planning and execution, public institutions continue to encounter major delays, cost-overruns, operational failures, and process breaches in their major procurement initiatives. In fact, in a series of recent reports, the U.S. Government Accountability Office and Office of Inspector General found further examples of project failures across a broad range of portfolios (see Reports Find Cost-Control and Delivery Failures).

Further, as the Auditor General of Canada's February 2024 *ArriveCan* report illustrates, the failure to establish proper project oversight and planning protocols undermines spending controls, increases the risk of contract award irregularities, and leads to sub-standard project delivery.

As the report revealed, the government charged head-long into an urgent procurement project involving tens of millions of dollars with no-one knowing who was responsible for overseeing the related spending decisions. The report serves as a warning to all public institutions of the need to proactively adopt proper institutional governance and strategic planning standards to deal with major procurement projects (see ArriveCan Audit Exposes Weak Oversight).



Setting Project Teams Up for Failure: Failing to address the five inherent risk factors leads to overly optimistic planning assumptions and imposes unrealistic expectations on major project teams.

Paul Emanuelli

The Five Inherent Risk Factors

The Flawed Execution Fallacy

Project teams should be aware of the five inherent risk factors that impact public sector procurement projects. To better understand the systemic nature of the inherent risk factors, it is important to debunk the flawed-execution fallacy that views project failures as localized and random events that can be attributed to unanticipated incompetence at the project-team level, and entrenched inefficiencies in the institution's procurement department and procurement procedures.

While partially accurate, project-level incompetence and inefficient institutional-level project management mechanisms only account for about 40% of the inherent risk factors that plague public sector procurement projects. To form a complete picture, public institutions must also address the other three systemic structural flaws: senior-level indecision, senior-level interference, and inadequate project resourcing.

Paul Emanuelli

The Four Measures of Success and Failure

Foreseeable Results

While some may assume that project failures in public procurement are random, unforeseen accidents, this is a misconception since project failures, and their causes, are both highly foreseeable and, with the appropriate proactive measures, highly preventable. In fact, an assessment of the case studies drawn from public audit reviews and procurement legal decisions shows that project failures tend to fall within recurring patterns that indicate identifiable and predictable risk areas.

Project failures typically manifest themselves in one or more of the following ways:

- the failure to meet operational needs;
- the failure to stay within budget;
- the failure to deliver on time; and
- the failure to follow the process rules.

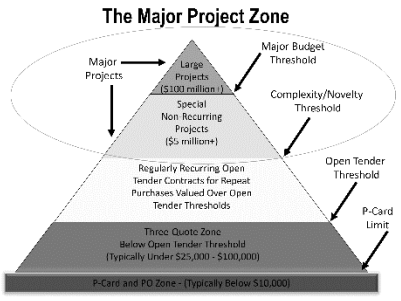
Based on these recurring risk areas, the definition of project success can be distilled into one simple question: *Did we buy what we needed, on budget, on time, and by the rules?*

Given the above, project teams should carefully consider the importance of all four project success factors since this is not a game of averages and they will ultimately be measured by how they deliver against all four benchmarks. (see A State of Peril: Why Procurement Projects Fail)

Paul Emanuelli

The Art of Strategic Execution

Early Integration is Critical

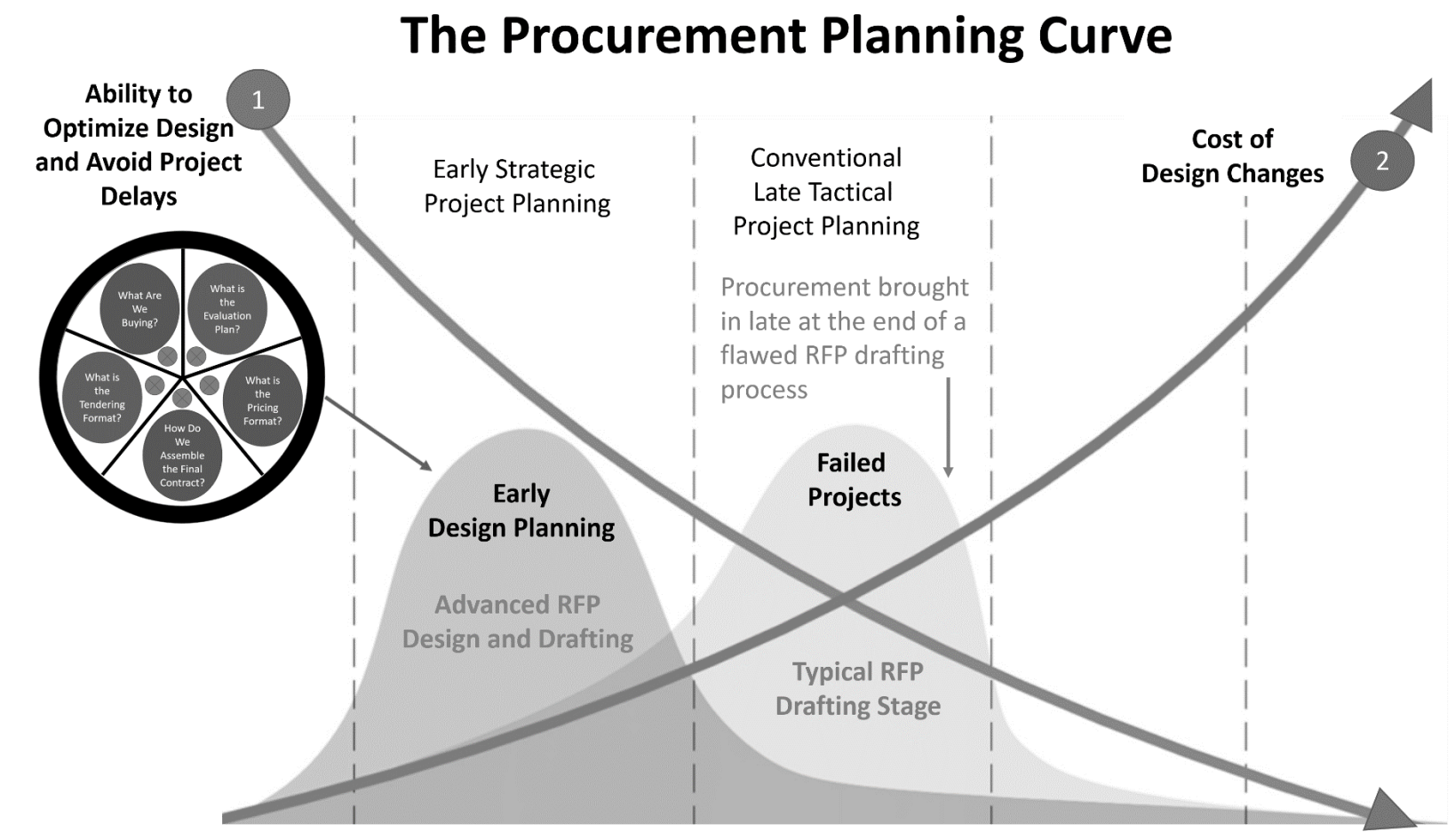


Embedding Project Mangement Disciplines: With the right leadership, procurement departments can bring real business process improvement to the procurement cycle and embed the project management disciplines necessary to launch projects on a trajectory to successful contract performance.

If they want to deliver procurement projects with speed and precision, public institutions need to take a procurement-centric approach to business process improvement. That process improvement should integrate strategic planning at the start of each project and apply proper project management practices to solicitation drafting, bid evaluations, and contract award negotiations.

Strategic procurement advice should inform the business planning decisions that drive project scoping, pricing structures, and contract development strategies. That advice should also inform the procedural transparency standards that define defensible evaluation criteria and award procedures. To meet these standards, public procurement advisors need to integrate themselves into the start of the project to advise on initial strategic design planning. However, due to deeply engrained institutional misconceptions, procurement departments are typically not viewed as strategic partners in the planning process, and this leads to significant lost opportunities. Project teams tend to cut procurement advisors out of strategic discussions, viewing procurement departments as, at best, tactical and operational service providers and, even worse, clerical cogs who create bureaucratic barriers to project success. After being cut out of strategic discussions, those same procurement advisors are then asked to execute on flawed strategies and are often blamed when projects fail. This then reinforces the decision to exclude them from the strategy table on the next project. Procurement departments need to stop this cycle of failure by advocating for the implementation of strategic procurement within their organizations.

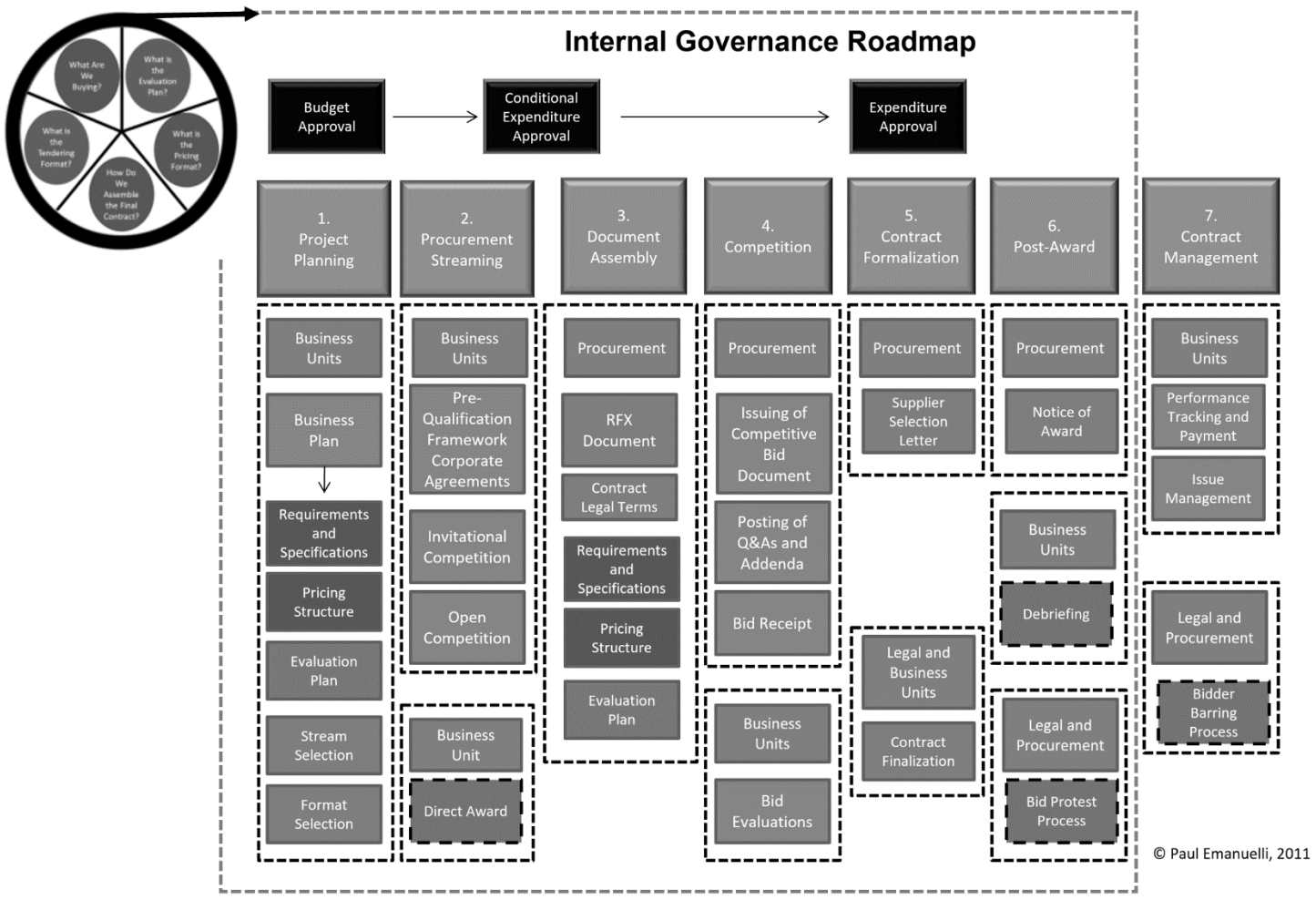
While project management principles may already be applied on some public sector projects at the post-contract award stage of the procurement cycle, by that point it is too late to make a strategic impact. To enable front-end strategic procurement, public institutions need to execute an institutional rapid action plan that redesigns internal business processes and embeds a culture of project management from the outset of a project. This means mandating strategic execution in the designing and drafting of solicitation documents, in the bid evaluation process, and in the negotiation of contract awards. Each sub-project should have a specific project manager that organizes each sub-stage and co-ordinates activities along the critical path, since someone needs to lead project teams through each stage and navigate any external factors that are blocking the road to contract award. This allows procurement advisors to be engaged from the start of a project so they can provide the strategic advice needed to accelerate downstream execution, while also adding enough float time to deal with unforeseen delays. This strategic planning is critical to success, since starting a project with no strategic design plan and no float time sets a project up to fail before it even begins.



Applying the MacLeamy Curve to Project Design: Project teams need to address the five key elements of project design during early strategic planning.

The "95/5" rule recognizes that 95 percent of procurement failures are caused by the failure to properly address the five core design elements of project planning at the strategic planning stage of a procurement project. To help jump-start your projects and accelerate your tendering cycles, your project team needs to focus on the five core elements of strategic design-planning: project requirements; pricing structures; contract assembly; evaluation plans; and tendering formats.

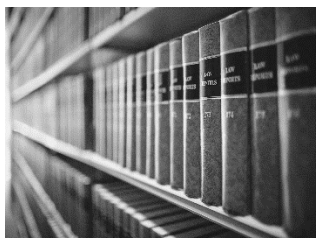
To avoid project delays and incurring the cost of design changes, project teams need to enable proper project execution by proactively addressing the key project design decisions as early in the project as possible. The longer project teams delay their decision-making on these key elements, the greater the risk of project failure. (see Five Planning Steps to Fast-Tracked Tendering)



Restrictive Evaluations: In its July 2022 *Annual Report 2021-2022*, Canada's Office of the Procurement Ombudsman cautioned against the use of unnecessarily restrictive evaluation criteria, noting that concerns over unfair, restrictive, or biased evaluation criteria, along with concerns over unfair incumbent advantage, were the top issues raised by its industry stakeholders. (see also Drafting Errors Costly to Privy Council, Vaguely Drafted Bidding Rules Lead to Bid Dispute, and Self-Certifications Valid for Tender Compliance)

Opening Competition Through Dialogue RFPs

Restrictive Criteria and Requirements Stifle Innovation



Unnecessarily strict procedures, overly narrow evaluation criteria, and overly prescriptive specifications serve to stifle competition and expose the procurement process to unnecessary litigation.

To avoid tender compliance disputes and enable innovation, purchasing institutions should deploy negotiated RFPs that include rectification procedures and competitive dialogue stages. Bidders are becoming increasingly vigilant in challenging what they perceive to be unnecessarily restrictive public procurement procedures. For example, in the October 2021 decision in *Global Translation Solutions ltd. v. European Parliament*, the Court of Justice of the European Union upheld the rejection of a bid after determining that the rejected bidder submitted parts of its proposal in the wrong file format. While the Court upheld the bid rejection after finding that the specific tendering rules did not allow the bidder to cure this issue, the time and expense of defending the legal challenge could have been avoided had more flexible submission procedures been adopted that allowed the bidder to rectify the relatively minor file format irregularity. In addition to taking issue with unnecessarily strict procedures, bidders are increasingly challenging what they perceive to be overly restrictive evaluation criteria and performance requirements. For example, in the October 2022 High Court of Delhi decision in *Mehendiram Foods Products Private Limited v Government of NCT of Delhi*, a supplier brought an application to court seeking to quash what it alleged were arbitrary, discriminatory, and biased terms in a school food services RFP. While the Court rejected the specific challenge, the case reflects a growing legal trend that sees public institutions under increasing pressure to avoid restrictive requirements and other anti-competitive practices.

In its October 2022 report entitled *Improving health care through pro-competitive procurement policy: Digital Health Care Market Study Part 2*, Canada's Competition Bureau recommended that government institutions use less prescriptive evaluation criteria and specifications, and use negotiated RFPs to enable bidders to propose market-based solutions rather than being tied to unnecessarily narrow government requirements.

> The use of requirements that are "ill conceived or too demanding" can result in the unnecessary elimination of potential bidders.
> - Canada's Competition Bureau

As this report cautioned, "Canada is at risk of falling behind international best practices for digitally-enabled health care treatments" and that adjustments were required to government purchasing rules to "ensure that Canadians continue to have access to the best care possible." The Competition Bureau attributed current restrictive practices to a lack of government expertise in defining requirements and to a lack of market intelligence. Rather than locking their procurements down with restrictive procedures, and stifling innovation with anti-competitive requirements, public institutions should be leveraging negotiated RFPs with competitive dialogues so they can open their competitions to more suppliers and open the door to more innovation. (see Opening Competition Through Dialogue RFPs)