



Contracting Policy - amended

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Contracting Policy

Note to reader

This policy is valid until May 13, 2022.

The procurement requirements in the [*Policy on the Planning and Management of Investments*](#) and the [*Directive on the Management of Procurement*](#) take effect on May 13, 2021; however, departments have 12 months to fully transition to the new instruments.

During the transition period, departments may adhere to the requirements described in either of the following:

- the [*Policy on the Planning and Management of Investments*](#) and the [*Directive on the Management of Procurement*](#)
or
- the [*Contracting Policy*](#)

1. Policy Objective

The objective of government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.

2. Policy statement

Government contracting shall be conducted in a manner that will:

- a. stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds;
- b. ensure the pre-eminence of operational requirements;
- c. support long-term industrial and regional development and other appropriate national objectives, including aboriginal economic development;
- d. comply with the government's obligations under the [*North American Free Trade Agreement*](#), the [*World Trade Organization – Agreement on Government Procurement*](#) and the [*Agreement on Internal Trade*](#).

3. Application

This policy applies to all departments and agencies, including departmental corporations and branches designated as departments for purposes of the *Financial Administration Act*, except those included within the meaning of paragraph (c) of the definition of "department" found in section 2 of that Act. The following transactions are not covered in the policy:

- a. revenue-producing contracts (sales and concession contracts, leases of Crown property) and the like;
- b. contracts related to the acquisition of land (which are covered by separate statutes and regulations);

- c. the transfer of goods, services or real property between departments, Crown Corporations, provinces, municipalities and the Territories;
- d. grants and contributions;
- e. shared cost programs in which the government is not the contracting authority;
- f. any contract not funded by Parliament in which the government acts as an agent for other parties;
- g. leases and contracts for the fit-up of an office or residential accommodation pursuant to the *Federal Real Property Act* and its Regulations; and
- h. Interchange-Canada agreements.

3.1 Contracting authorities

Contracting authorities listed in the Schedule of the *Government Contracts Regulations* and Commissions created pursuant to the *Inquiries Act* are exempted from the requirements in this policy for approval by the Treasury Board.

The Minister of Public Works and Government Services Canada is exempted from the requirements in this policy for approval by the Treasury Board to enter into or amend a contract for a contracting authority listed in the Schedule of the *Government Contracts Regulations* or for the use of an organization that is not subject to Appendix C of this policy.

4. Policy requirements

4.1 Contract policy requirements

4.1.1 In support of the policy, the following must be observed in conjunction with the Definitions, the Government Contracts Regulations, the Treasury Board Contracts Directives, the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*, as well as those other Appendices and Sections which consist of both mandatory and optional requirements or a combination of both, as specified.

4.1.2 Work descriptions or specifications must be defined in terms of clear outputs or performance requirements that will encourage and accommodate the use of the competitive process and as required under the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*.

4.1.3 Whenever practical, an equal opportunity must be provided for all firms and individuals to compete, provided that they have, in the judgement of the contracting authority, the technical, financial and managerial competence to discharge the contract and meet, where appropriate, the objectives established by overall national policies or as required under the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*.

4.1.4 Where applicable, bid evaluation criteria must be established to address socio-economic factors in relation to the total cost of a contract before bids are solicited, and solicitation documents must give notice that socio-economic factors will be used to assess bids when they are received.

4.1.5 The *Government Contracts Regulations* as amended (refer to Appendix B), require that:

- a. bids must be solicited from potential contractors before any contract is entered into unless one or more of the exceptions in Section 6 of the Regulations are applicable;
- b. advance payments must be approved by the Treasury Board where the Board's authority is required for entry into the contract;
- c. provisions of the regulations on bid or contract security must be followed when the contracting authority believes they are appropriate.

4.1.6 Treasury Board approval must be obtained prior to entering into contracts or contractual arrangements where the values or the contract costs (which include all applicable taxes including GST and HST) exceed the limits prescribed by the Treasury Board in the Treasury Board Contracts Directive (Appendix C).

4.1.7 Contracting authorities may enter into contracts in response to a pressing emergency in accordance with Part III of the Treasury Board Contracts Directive on condition that details of the use of this authority are reported to the Treasury Board Secretariat within 60 days of the authorization or beginning of the work.

4.1.8 Public servants who have been delegated authority to negotiate and conclude contractual arrangements on behalf of the Crown must exercise this authority with prudence and probity so that the contracting authority (the minister) is acting and is seen to be acting within the letter and the spirit of the Government Contracts Regulations, the Treasury Board Contracts Directive and the government's procurement policies, the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*.

4.1.9 With respect to contracting for services, contracting authorities must:

- a. ensure that the statement of work or the requirements description clearly describes the work to be carried out, the objectives to be attained and the time frame;
- b. ensure that an employer-employee relationship will not result when contracting for the services of individuals in accordance with criteria established by the Canada Customs and Revenue Agency and pertinent court rulings;
- c. ensure that the fees paid do not exceed the appropriate market rate for the service provided;
- d. deleted.
- e. ensure that contracts for the services, awarded competitively or non-competitively, of former public servants in receipt of a pension or a lump sum payment (or both) reflect sound contracting practices, including fairness in selection and compensation. No contract for the services of a former public servant in receipt of a pension or a lump sum payment may be entered into unless the contracting authority is satisfied that it is in the public interest.

4.1.10 The *Government Contracts Regulations* as amended (refer to Appendix B) require that contracts for the performance of legal services may be entered into only by or under the authority of the Minister of Justice. Accordingly, while it is recognized that lawyers may be engaged for purposes other than the performance of legal services, the Department of Justice must be consulted in every case where a contract for services is entered into with a practising member of the bar, to determine whether the contract is for legal services and thus whether the approval of the Department of Justice is required. No contracting authority may enter into a contract for services with a practising member of the bar without first having obtained the approval of the Department of Justice, or having been advised by the Department of Justice that the contract does not involve legal services.

4.1.11 If a contracting authority enters into a contract without Treasury Board approval when such approval should have been obtained, ratification by the Treasury Board must be sought as soon as possible.

4.2 Related requirements

4.2.1 There are a number of other government policies as well as administrative practices which must be observed in relation to the contracting policy requirements. Many of these administrative requirements follow from the applicability of other laws, policies, conventions and procedures which are of themselves outside of the policy on contracting for goods, services and construction. This article provides an overview of these other policies; the guidelines and appendices contain additional information.

4.2.2 Conviction under Sections 121, 124 and 418 of the Criminal Code denies the capacity to contract with the Crown, unless the Governor in Council under Section 748(3) has restored (in whole or in part) this capacity to the individual or the individual has been granted a pardon.

4.2.3 Public servants must not only act within the law at all times but also must act as though the Criminal Code of Canada were in force in all places where they engage in commercial transactions on behalf of the government. Accepting of bribes or other improper influence is specifically prohibited.

4.2.4 Where applicable, contracting authorities are to observe the provisions of the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*, as amended from time to time.

4.2.5 The Federal Contractors Program for Employment Equity stipulates certain conditions when contracting for goods and services worth \$1,000,000 or more with a contractor employing 100 or more people (see Appendix D).

4.2.6 Pursuant to paragraph 221(1)(d) of the *Income Tax Act*, payments exceeding \$500.00 made by departments and agencies under applicable service contracts, including contracts involving a mix of goods and services, must be reported on a T1204 supplementary slip. Refer to sections 16.14 and 16.15 for details associated with this requirement.

4.2.7 The *Common Services Policy* provides that departments and agencies must obtain goods and certain services from common service organizations only, unless exception is made by direction, through other Treasury Board policies, within specific departmental legislation, or in the provisions of the Common Services Policy.

4.2.8 Section 9 of the *Department of Public Works and Government Services Act* gives the Minister of Public Works and Government Services exclusive responsibility for the procurement of all goods as described in the Act. Other departments and agencies may only procure goods either when their own legislation specifically permits or when an appropriate delegation of authority has been made by the Minister of Public Works and Government Services.

4.2.9 Where applicable, contracting authorities are to observe the requirements of the [Procurement Strategy for Aboriginal Business](#).

4.2.10 Contracting authorities are to observe the provisions of the government *Security Policy*.

4.2.11 All contracts must contain appropriate clauses to permit the payment of interest in accordance with the *Policy on Payment Requisitioning and Payment on Due Date*, as well as the applicable Goods and Services Tax and the Harmonized Sales Tax.

4.2.12 All contracts must contain appropriate clauses to reflect the requirements of the *Conflict of Interest Act*.

4.2.13 When a contractor defaults, any contract financial security shall be redeemed and applied to compensate the Crown to the limit permitted in the contract.

4.2.14 Contracting authorities cannot assume or acquire the powers or authority of any department, branch or agency of the Government of Canada to which they provide services such that they acquire greater powers and authority than those conferred by their own legislation or other applicable statutes or regulations.

4.2.15 Departments must ensure that adequate management controls are in place to protect the integrity of the bidding process. It is recognized that the bidding process may employ either traditional hard copy documents or electronic bid documents. In either situation, in order to stand the test of public scrutiny in matters of prudence and probity, Departments must have the ability to demonstrate that all bid materials are received on time and in the manner prescribed in the tender/solicitation documents. In the case of electronic bids, Departments must also ensure that the documents are not altered, forged, changed or corrupted either intentionally or by error. If a contracting authority suspects that collusion or bid rigging has taken place in the bidding process, it shall notify Industry Canada.

4.2.16 The [National Joint Council Travel Directive](#) applies to travel costs incurred by contractors when these costs are a specific element of the contract.

4.2.17 The Standard Federal Government Construction Contract should be used for all construction contracts that exceed \$100,000. The basic policy governing the principles and expression of policy in the Standard Federal Government Construction Contract is the prerogative of the Treasury Board. However, the style and content of the form is the responsibility of the Department of Public Works and Government Services Canada.

4.2.18 Deleted.

4.2.19 When contracting for temporary *help* services (administrative support and other categories) contracting authorities should give consideration to obtaining these services directly from companies with which the Department of Public Works and Government Services has entered into temporary help standing offers. Contracting authorities have the option of acquiring temporary help through a standing offer established by Public Works and Government Services Canada, or by dealing directly, by means of a separate departmental standing offer or a contract with other suppliers. Further information on the existence of temporary help standing offers may be obtained from the Department of Public Works and Government Services.

4.2.20 When contracting for the services of former public servants in receipt of a pension paid pursuant to the *Public Service Superannuation Act (PSSA)*, or in receipt of a lump sum payment, discretion is to be exercised to ensure that the public perception is not one of favouritism to these individuals. For this reason, all contracting authorities are to disclose contracting with former public servants regularly (as per the [Guidelines on the Proactive Disclosure of Contracts](#), and [Contracting Policy Notice: 2012-2](#)).

Deputy heads are responsible for ensuring that contracting authorities document a justification for contracting with a former public servant that includes price substantiation, risk mitigation and cost control measures to adjust for pension or lump sum payments as appropriate.

4.2.21 All contracts for public opinion research and advertising must be entered into according to the requirements set out at section 16.13 of the Contracting Policy.

4.2.22 Deleted (moved to section 4.3).

4.2.23 In all contractual situations, the ownership of intellectual property must be addressed (if relevant) in line with current policy prior to contract award. All relevant contracts must contain clauses indicating the ownership of intellectual property.

4.2.24 In the Province of Ontario, federal contracting authorities are required to observe the intent and follow the provisions of the Ontario legislation concerning the protection of jobs and the level of benefits of workers who work primarily at one specific site to provide building cleaning, food and security services. See Appendix E.

4.2.25 Contracting authorities may negotiate and approve employee takeover contracts up to \$10 million for both competitive and non-competitive contracts. However, every contracting authority must submit its first case over \$1 million to Treasury Board for approval, to ensure that the department has established an adequate process for handling employee takeovers, which meet government-wide standards. See Appendix C.

4.2.26 Where appropriate, departments must:

4.2.26.1 Include accessibility criteria when specifying requirements for goods and services; and

4.2.26.2 Ensure that deliverables incorporate accessibility features.

4.2.27 Consistent with trade agreements and comprehensive land claims agreements, if the department determines that it is not appropriate to include accessibility criteria as part of commodity specifications, or if it is unable to obtain goods or services that comply, the client or technical authority must ensure that clear justification is on file.

4.3 Contracts with Aboriginal peoples and Aboriginal businesses

4.3.1 The Government of Canada has entered into Comprehensive Land Claims Agreements with Aboriginal peoples. These agreements have the force of law and are protected in Canada's Constitution. Many agreements include provisions dealing with economic and social development benefits affecting contracting in land claim areas. Below are links to these agreements, park agreements and co-operation agreements that contain Aboriginal participation requirements or other contracting requirements.

4.3.2 All Comprehensive Land Claim Agreements except the James Bay and Northern Quebec Agreement can be obtained at:

Publications and Public Enquiries Kiosk

Aboriginal Affairs and Northern Development Canada,
Les Terrasses de La Chaudière,
Room 1415,

10 Wellington Street,
Ottawa, Ontario K1A 0H4.
Telephone (819) 997-0380;
facsimile (819) 953-3017.

Copies of the James Bay and Northern Quebec Agreement can be purchased from the "Editeur Officiel du Québec" by sending a request by facsimile to: 1-800-561-3479.

4.3.3 Program managers and contracting officials should note that many contracting obligations start at the project planning stage, which should be documented on the contract file.

4.3.4 Program managers and contracting officers should note that the interpretation of how specific procurements contribute to achieving the spirit and intent of the agreements while complying with the principles of fairness, openness and transparency requires a detailed understanding of the agreements and contracting requirements.

4.3.5 Deputy heads are encouraged to seek legal advice before changing their procurement practices, policies or systems to ensure that the government's legal obligations will continue to be met.

4.3.6 Deputy heads should note that the North American Free Trade Agreement and the World Trade Agreement include provisions to allow procurements to be set aside for Aboriginal peoples, including contracts in land claim areas. Similar measures "adopted or maintained with respect to Aboriginal peoples" also allow exemptions from the Agreement on Internal Trade.

4.3.7 When applicable, contracting authorities are to implement the contract priority provisions of the James Bay and Northern Quebec Agreement (JBNQA) and the JBNQA Implementation Agreement (1990), referred to together as "the Agreement", in relation to all contracts awarded by the Crown in the Territory. The policy and implementation measures (prescribed in Appendix T) shall be carried out in a manner that recognizes the developing nature of the economy and labour force in the Territory. The policy, as expressed in the Agreement, applies to and is to take all reasonable measures to encourage Inuit participation in all contracts. The policy applies to all contracts that are created by projects initiated or conducted in the Territory, by the Crown or its agents, delegates, contractors or subcontractors.

4.3.8 Section 4. [Inuit of Nunavut Land Claim Agreement](#) – July 9, 1993

Contracting Authorities should refer to the Nunavut Settlement Agreement Article 2 for General Provisions, Article 8 for the establishment, operation or maintenance of park facilities, and Article 33 for contracts relating to archaeological work. This section of the policy reflects the Government contracting obligations addressed in Article 24 of the Agreement.

Article 1

1.1.1 "Designated Inuit Organization" (DIO) means

- a. the Tungavik, or*
- b. in respect of a function under the Agreement, any organizations that have been designated under Section 39.1.3 as responsible for that function.*

Article 8

8.4.8 Where Government intends to contract for the establishment, operation or maintenance of park facilities in the Nunavut Settlement Area, Government shall:

- a. give preferential treatment to qualified Inuit contractors where Government proposes to tender such contracts; and
- b. ensure that all contractors give preferential treatment to Inuit.

8.4.9 A DIO shall have the right of first refusal to operate all business opportunities and ventures that are contracted out with respect to Parks in the Nunavut Settlement Area. Upon request, Government shall make available to a DIO all reports and other materials in its possession relevant to the analysis of the economic feasibility of business opportunities and ventures in Parks in the Nunavut Settlement Area.

Article 24

Part 1: Definitions

24.1.1 In this Article:

"Government" means the Government of Canada or the Territorial Government;

"government contract" means a contract, other than a contract for government employment as defined in Article 23 of the Agreement, between the Government and a party other than Government or any other government for procurement of goods or services, and includes

- a. contracts for the supply of goods,
- b. construction contracts,
- c. contracts for the supply of services, and
- d. leases;

"Government of Canada" means all federal departments and departmental corporations listed in Schedules I and II, and parent Crown Corporations listed in Schedule III, Part I of the Financial Administration Act RSC 1985, Chapter F-11;

"Inuit firm" means an entity which complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which is

- a. a limited company with at least 51% of the company's voting shares beneficially owned by Inuit,
- b. a co-operative controlled by Inuit, or
- c. an Inuk sole proprietorship or partnership;

"invite" means to call publicly for bids;

"representative level of employment" means a level of employment in the Nunavut Settlement Area that reflects the ratio of Inuit to the total population of the Nunavut Settlement Area;

"solicit" means to request bids from a limited number of businesses based on some form of pre qualification;

"Territorial Government" means all territorial government departments and all public agencies defined by the Financial Administration Act, S.N.W.T. 1987 (1), c.16, Part IX and Schedules A, B, C, but excluding the Northwest Territories Power Corporation.

Part 2: Objective

24.2.1 The Government of Canada and the Territorial Government shall provide reasonable support and assistance to Inuit firms in accordance with this Article to enable them to compete for government contracts.

Part 3: Procurement Policies

Government of Canada Policies

24.3.1 Consistent with this Article, the Government of Canada shall develop, implement or maintain procurement policies respecting Inuit firms for all Government of Canada contracts required in support of its activities in the Nunavut Settlement Area.

24.3.2 The Government of Canada shall develop or maintain its procurement policies in close consultation with the DIO, and shall implement the policies through legislative, regulatory or administrative measures.

24.3.3 The measures referred to in Section 24.3.2 shall be binding on the Government of Canada, and shall be given effect:

- a. in all cases, no later than one year following the date of the ratification of the Agreement; and*
- b. with respect to survey contracts prior to the award of survey contracts arising from Article 19 of the Agreement.*

Adaptability Over Time

24.3.5 Procurement policies and implementing measures shall be carried out in a manner that responds to the developing nature of the Nunavut Settlement Area economy and labour force. In particular, the policies shall take into account the increased ability, over time, of Inuit firms to compete for and to successfully complete government contracts.

Policy Objectives

24.3.6 Procurement policies and implementing measures shall reflect, to the extent possible, the following objectives:

- a. increased participation by Inuit firms in business opportunities in the Nunavut Settlement Area economy;*
- b. improved capacity of Inuit firms to compete for government contracts; and*
- c. employment of Inuit at a representative level in the Nunavut Settlement Area work force.*

Consultation

24.3.7 To support the objectives set out in Section 24.3.6, the Government of Canada and the Territorial Government shall develop and maintain policies and programs in close consultation with the DIO which are designed to achieve the following objectives:

- a. increased access by Inuit to on-the-job training, apprenticeship, skill development, upgrading, and other job related programs; and
- b. greater opportunities for Inuit to receive training and experience to successfully create, operate and manage Northern businesses.

Part 4: Bid Invitation

24.4.1 In co-operation with the DIO, the Government of Canada and the Territorial Government shall assist Inuit firms to become familiar with their bidding and contracting procedures, and encourage Inuit firms to bid for government contracts in the Nunavut Settlement Area.

24.4.2 In inviting bids on government contracts in the Nunavut Settlement Area, the Government of Canada and the Territorial Government shall provide all reasonable opportunities to Inuit firms to submit competitive bids, and, in doing so, shall take, where practicable and consistent with sound procurement management, the following measures:

- a. set the date, location, and terms and conditions for bidding so that Inuit firms may readily bid;
- b. invite bids by commodity groupings to permit smaller and more specialised firms to bid;
- c. permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialised firms to bid;
- d. design construction contracts in a way so as to increase the opportunity for smaller and more specialised firms to bid; and
- e. avoid artificially inflated employment skills requirements not essential to the fulfilment of the contract.

24.4.3 Where the Government of Canada or the Territorial Government intends to invite bids for government contracts to be performed in the Nunavut Settlement Area, it shall take all reasonable measures to inform Inuit firms of such bids, and provide Inuit firms with a fair and reasonable opportunity to submit bids.

Part 5: Bid Solicitation

24.5.1 Where the Government of Canada or the Territorial Government solicits bids for government contracts to be performed in the Nunavut Settlement Area, it shall ensure that qualified Inuit firms are included in the list of those firms solicited to bid.

24.5.2 Where an Inuit firm has previously been awarded a government contract, and has successfully carried out the contract, that Inuit firm shall be included in the solicitation to bid for contracts of a similar nature.

24.5.3 In the absence of competitive bidding for government contracts, qualified Inuit firms will be given fair consideration.

Part 6: Bid Criteria

24.6.1 *Whenever practicable, and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Government of Canada for the awarding of its government contracts in the Nunavut Settlement Area:*

- a. *the existence of head offices, administrative offices or Other facilities in the Nunavut Settlement Area;*
- b. *the employment of Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contracts; or*
- c. *the undertaking of commitments, under the contract, with respect to on-the-job training or skills development for Inuit.*

24.6.2 *Whenever practicable and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Territorial Government for the awarding of its government contracts in the Nunavut Settlement Area:*

- a. *the proximity of head offices, administrative offices or other facilities to the area where the contract will be carried out;*
- b. *the employment of Inuit labour, engagement of Inuit professional services or use of suppliers that are Inuit or Inuit firms in carrying out the contract; or*
- c. *the undertaking of commitments, under the contract, with respect to on-the-job training or skills development for Inuit.*

Part 7: List of Inuit Firms

24.7.1 *The DIO shall prepare and maintain a comprehensive list of Inuit firms, together with information on the goods and services which they would be in a position to furnish in relation to government contracts. This list shall be considered by the Government of Canada and the Territorial Government in meeting their obligations under this Article.*

Part 8: Evaluation and Monitoring

24.8.1 *The Government of Canada and the Territorial Government, in co-operation with the DIO, shall take the necessary measures to monitor and periodically evaluate the implementation of this Article.*

Part 9: Implementation

24.9.1 *The objectives of this Article shall be achieved throughout the allocation or re-allocation of government expenditures without imposing additional financial obligation on the Government of Canada or the Territorial Government.*

24.9.2 *The Territorial Government will carry out the terms of this Article through the application of Territorial Government preferential contracting policies, procedures and approaches intended to maximise local, regional and northern employment and business opportunities.*

24.9.3 *The Government of Canada, the Territorial Government and the DIO shall conduct a review of the effect of this Article within 20 years of its implementation. If the DIO and the*

Government of Canada or the Territorial Government, as the case may be, agree after the review that the objectives of this Article have been met, the obligations under this Article of the Government of Canada or the Territorial Government, as the case may be, shall cease within one year of the completion of the review. If the obligations of the Government of Canada or the Territorial Government under this Article remain in effect after the initial review, the Parties shall review the requirement to continue such provisions every five years or at such other times as they may agree.

Part 10: Co-operation Agreement between the Inuvialuit Regional Corporation and the Department of National Defence Concerning the Restoration and Clean-Up of DEW sites within the Inuvialuit Settlement Region - February 2, 1996

33.6.1 Where any agency of the Government intends to contract for carrying out of archaeological work in the Nunavut Settlement Area, the agency shall:

- a. give preferential treatment to qualified Inuit contractors where the agency proposes to tender such contract; and
- b. ensure that all contractors give preferential treatment to qualified Inuit.

33.6.2 Any archaeological programs in the Nunavut Settlement Area that are administered by Government shall conform, at a minimum, to the employment and training provisions set out in Article 23.

4.3.9 Links to some Comprehensive Land Claim Agreements that contain contracting obligations:

- [James Bay and Northern Quebec Agreement](#) (particularly articles 28.10.3, 28.10.4, 28.10.11 and 29.0.31)
- [Agreement Respecting the Implementation of the James Bay and Northern Quebec Agreement](#) (signed September 12, 1990), Annex A – Inuit Employment and Contract Priority.
- [Inuvialuit Final Agreement](#) (particularly article 16)
- [Gwich'in Comprehensive Land Claim Agreement](#) (particularly articles 10.1.4 and 25.1.10, as well as Appendix C, sections 9.7, 11.6, 13.6, and 17.2)
- [Inuit of Nunavut Land Claim Agreement](#) (particularly articles 2 and 24)
- [Umbrella Final Agreement Between The Government Of Canada, The Council For Yukon Indians And The Government Of The Yukon](#)(particularly articles 6.4, 13.1.1.3 and 22.5.0)
- [First Nation of Nacho Nyak Dun Final Agreement](#) (particularly articles 6.4.0, 13.1.1.3 and 22.5.0)
- [Champagne and Aishihik First Nations Final Agreement](#) (particularly articles 6.4.0, 13.1.1.3, 13.12.0 and 22.5)
- [Teslin Tlingit Council Final Agreement](#) (particularly articles 6.4.0, 13.1.1.3 and 22.5.0)
- [Vuntut Gwitchin First Nation Final Agreement](#) (particularly articles 9.6, 9.7 and 9.8 [Chapter 10, Schedule A], 6.4.0, 13.1.1.3, and 22.5.0)
- [Selkirk First Nation Final Agreement](#) (particularly articles 5.1 and 5.2 [Chapter 13, Schedule A], 13.1, 15.7 and 17.14)
- [Little Salmon/Carmacks First Nation Final Agreement](#) (particularly articles 13.1, 15.7 and 17.14)

- [Sahtu Dene and Metis Comprehensive Land Claim Agreement](#) (particularly articles 12.2.1, 21.3 and 26.2.8)
- [Northeastern Quebec Agreement](#) (amends JBNQA)
- [Labrador Inuit Land Claims Agreement](#)
- [Nunavik Inuit Land Claims Agreement](#)
- [Tlicho Agreement](#)
- [Carcross Tagish First Nation Final Agreement](#)
- [Kluane First Nation Final Agreement](#)
- [Kwanlin Dun First Nation Final Agreement](#)
- [Ta'an Kwach'an Council Final Agreement](#)
- [Tr'ondëk Hwëch'in Final Agreement](#)
- [Umbrella Final Agreement](#)
- [Nisga'a Final Agreement](#)

Note: if any of the above links do not work, the [agreements](#) may be accessible on the Aboriginal Affairs and Northern Development Canada site.

5. Monitoring

5.1 Reporting mechanisms

5.1.1 It is the responsibility of departments and agencies to ensure that adequate control frameworks for due diligence and effective stewardship of public funds are in place and working. Treasury Board Secretariat works with departments and agencies to address management issues and compliance with Contracting Policies identified through its ongoing relationships with departments, management reviews, evaluations, internal audits and transactions.

5.1.2 All departments and agencies awarding contracts and/or amendments, are required to submit an annual report to the Treasury Board Secretariat on all contracting activities (see Appendix K for details).

5.1.3 Also, as part of the obligations of the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*, contracting authorities are required to report certain statistics. These statistics are collected from the contract coding information provided by contracting officers on each procurement. Thus, accurate coding of the applicable agreements, goods, services or construction code, tendering method, limited tendering reasons and contract award details is essential to demonstrate the federal government's compliance with the agreements to the other countries or provinces that are parties to the agreement.

5.1.4 The government monitors and reports on its contracting activities covered by all Comprehensive Land Claims Agreements (CLCAs). These agreements form part of the treaty rights that are protected in Section 35 of the *Constitution Act, 1982*.

5.1.4.1 Deputy heads must report to the deputy head of Aboriginal Affairs and Northern Development Canada (AANDC) on contracts entered into by their departments and contracts entered into by Public Works and Government Services Canada on behalf of their department in a form and manner designated by the Deputy Minister of AANDC within 45 calendar days after the end of the quarter. These reports must include the following information for each contract and the summary:

- a. The name of the applicable CLCA(s) where the services or goods were delivered,
- b. The postal code(s) for the locations benefiting from the services delivered, or where the goods are installed and put to use,
- c. The name of the contractor,
- d. Classification of the Contractor as either
 - i. A beneficiary of a Land Claims Agreement or an entity owned by the beneficiaries of the [Insert name of the appropriate CLCA], or
 - ii. Not a beneficiary or entity owned by beneficiaries of the CLCA(s).
- e. The transaction number(s) in the departmental financial system (for example, the requisition number, commitment number or contract number).
- f. The Contract Award date,
- g. The contract expiry date,
- h. The Economic Objects code,
 - i. A short narrative description of the goods or services to be delivered.
- j. The value of the contract,
- k. Department Name and Customer Information System (CIS) number, and
 - l. Address of the location from where the order originated.

5.1.4.2 Deputy heads must provide a statement to AANDC quarterly to the effect that no contracting has occurred in a CLCA area if no contracting has occurred in that area.

5.1.4.3 The deputy head of AANDC must prepare and disclose, on a public Government of Canada website, a quarterly report on contracts for each area covered by a CLCA within 90 calendar days after the end of the quarter. Each report must include the information described in sections 5.1.4.1 and 5.1.4.2 from each department and agency.

5.1.4.4 The deputy head of AANDC must prepare and disclose, on a public Government of Canada website, an annual report on contracts for each area covered by a CLCA within 180 days after each fiscal year. The report must include the following information:

- a. The names of departments contracting in the Comprehensive Land Claims Agreement area showing the contracts awarded to beneficiaries and beneficiary owned entities as a percentage of total contracts and contract value.
- b. A list of the industry sectors, mapped from the list of the economic object codes, for which the goods and services were contracted showing the contracts awarded to beneficiaries and beneficiary owned entities as a percentage of total contracts and contract value for each,
- c. The total value of contracts with a breakdown by range of contract value, and
- d. The percentage of all government contracts and the value of all such contracts in the areas subject to Comprehensive Land Claims Agreements that were awarded to beneficiaries or beneficiary owned entities.

5.1.5 Reserved.

5.1.6 Deputy heads are required to publicly disclose quarterly, within one month after the close of each quarter, contracts entered into or amendments valued at over \$10,000.

5.2 Audit and evaluation

5.2.1 Where appropriate, contracting authorities should include a right-to-audit clause to ensure that verification of the amount paid is correct.

5.2.2 Contracting authorities are to ensure that contract files are properly documented.

6. References

6.1.1 In addition to the *Financial Administration Act*, the following acts, regulations and policies also apply specifically to contracting for goods and services, and construction by departments:

- a. the *Access to Information Act*, *Bankruptcy Act*, *Bills of Exchange Act*, *Canadian Charter of Rights and Freedoms*, *Competition Act*, *Criminal Code*, *Defence Production Act*, *Department of Justice Act*, *Department of Public Works and Government Services Act*, *Fair Wages and Hours of Labour Act*, *Federal Real Property Act*, *Official Languages Act*, *Privacy Act*, the *Status of the Artist Act*, and the *Public Service Employment Act*;
- b. the [North American Free Trade Agreement](#), the [World Trade Organization - Agreement On Government Procurement](#), the [Internal Trade Agreement](#), the *Conflict of Interest and Post-Employment Code for Public Office Holders* (1994), the *Security Policy*, the *Federal Contractors' Program for Employment Equity* and policies related to the avoidance of price fixing;
- c. the policies and guidelines found in the *Treasury Board Manual*.

6.1.2 This policy is issued pursuant to paragraph 7(1)(a) and sub-section 41(1) of the *Financial Administration Act*, the *Government Contracts Regulations* as amended, the *Treasury Board Delegation of Powers Order*, SOR 86-1123, and the *Treasury Board Contracts Directive*.

6.1.3 This policy as well as the appendices contained in this volume are to be read in conjunction with the provisions of statutory law as well as evolving judicial decisions that establish precedence in the application of the law.

6.1.4 The present document contains the text of the Contracting Policy. It was last updated on June 9, 2003, and replaces the former document dated December 21, 2001.

7. Enquiries

Please direct enquiries about this policy instrument to the organizational unit in your department responsible for this subject matter. For interpretation of this policy instrument, the responsible organizational unit should contact: [TBS Public Enquiries](#).

8. Procedural requirements – general

8.1 Authorities

8.1.1 The authority for departmental contracts is generally in the legislation constituting the department and conferring certain powers on the minister. This authority is reinforced by the *Appropriation Acts* passed by Parliament each year which, inter alia, provide funds to carry out the departmental mandate.

Subsection 41(1) of the *Financial Administration Act* provides for the establishment of financial limits above which Governor in Council or Treasury Board approval is required.

8.1.2 The *Government Contracts Regulations* were approved by the Governor in Council on June 30, 1987, P.C. 1987-1355, on the recommendation of the Treasury Board, pursuant to subsection 41(1) of the *Financial Administration Act*. These Regulations have been subsequently amended on a number of occasions (see Appendix B for the current text).

8.1.3 The Treasury Board Contracts Directive, which prescribes the dollar levels above which Treasury Board authority is to be obtained, is contained in Appendix C.

8.1.4 All dollar levels in Appendix C are inclusive of all applicable taxes (including GST and HST).

8.2 Roles and responsibilities

8.2.1 *Role of ministers*. The minister is ultimately responsible to Parliament for all contracting activity. Each minister customarily delegates contracting authority to various levels within the department or agency. As stated in article 4.2, Related Requirements, officials delegated such authority are to exercise it with prudence and probity so that the responsible minister is acting and is seen to be acting within the letter and the spirit of the *Government Contracts Regulations* and the Treasury Board's contracting directives.

8.2.2 *Common service organization (CSO)*. In some cases, the procurement of goods, which is the responsibility of the Minister of Public Works and Government Services, has been delegated to other ministers. In addition, the Treasury Board, pursuant to sub-section 7(1) of the *Financial Administration Act*, has directed that certain goods and services be procured through a CSO. (See the Treasury Board's policy on common services.)

8.2.3 *Treasury Board Advisory Committee on Contracts (TBACC)* considers matters involving the form and procedure of government contracts or the policy and guidelines on contracting that may be referred to it, or where the TBACC sees the need for change or clarification.

8.2.4 The work of TBACC, is undertaken by two subcommittees:

- a. *Construction Contracting Sub-Committee* – matters related to realty and construction; and
- b. *Contracting General Sub-Committee* – materiel and equipment, including repair and overhaul, and other issues not related to realty and construction.

8.2.5 Specialized working groups may be established to investigate and advise in areas of special interest.

8.3 Employment equity

8.3.1 As stated in article 4.2, Related requirements, when contracting for goods and services worth \$1,000,000 or more with a contractor employing 100 or more people, departments and agencies are to adhere to the conditions of the Federal Contractors' Program for Employment Equity set out in Appendix D.

8.4 International Sanctions

8.4.1 Persons and companies in Canada are bound by economic sanctions imposed by Canada by regulations passed pursuant to the *United Nations Act*. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries, entities or individuals subject to economic sanctions. Departments may obtain a list of sanctions from the [Foreign Affairs, Trade and Development Canada site](#). Contracting authorities must ensure that all contracts entered into pursuant to the *Government Contracts Regulations* contain a condition that prohibits the contractor from supplying to the Government of Canada any goods or services subject to economic sanctions. During the performance of any contract, should there be an addition to the list of sanctioned countries, entities or individuals or an addition to the list of sanctioned goods or services that causes an impossibility of performance for the contractor, the situation will be treated as a *force majeure*. All contracts must also contain a provision that requires the contractor to inform Canada of the existence of such a situation. Contracting authorities are advised to consult with legal counsel to determine the appropriate course of action in the event of a *force majeure* situation.

8.5 Official languages

8.5.1 As stated in article 6.1.1(a), the *Official Languages Act* and related policies and directives are to be observed in the contracting process. See Appendix F for details.

8.6 North American Free Trade Agreement (NAFTA)

8.6.1 Canada has agreed to apply the provisions of NAFTA, which is a multilateral agreement to reduce trade barriers between Canada, the United States of America and the Federal Republic of Mexico. Chapter 10 of NAFTA aims to achieve greater competition and transparency in government procurement, and to eliminate both protection of domestic products or suppliers, and discrimination among foreign products or suppliers.

8.6.2 Preferential treatment policies may only be applied to procurement before the applicable thresholds or if the particular procurement is excluded, excepted, a derogation or a set-aside from the trade agreements.

8.6.3 Deleted.

8.7 World Trade Organization – Agreement on Government Procurement (WTO-AGP)

8.7.1 The WTO-AGP is a multilateral agreement that aims to secure greater international competition for government procurement. The WTO-AGP came into effect on January 1, 1996. Member countries include Canada, the European Communities, the United States, Japan, Korea, Israel, Norway and Switzerland. The WTO-AGP replaces the General Agreement on Tariffs and Trade (GATT) Government Procurement Code by extending the previous coverage of goods to include services and construction. The national treatment and non-discrimination provisions and procurement procedures of the WTO-AGP are similar to those of NAFTA.

8.7.2 Deleted.

8.8 Agreement on Internal Trade (AIT)

8.8.1 The AIT is an agreement on Canadian internal trade, which aims to reduce barriers to trade within Canada. It was signed by the 10 provinces and 2 territories and came into effect on July 1, 1995.

Chapter 5 of AIT is intended to create a system that will allow fairness and equal access to government procurement for all Canadian suppliers in order to reduce cost, and develop a strong economy.

8.8.2 Deleted.

8.9 Common services

Role of common service organizations (CSOs) in government contracting

A vital aspect in government contracting is the role played by CSOs and their relationships with client departments at all stages in the life-cycle management of goods and services. When the interests of the government can best be met by centralized acquisition, the policy on common services provides that procurement be carried out by the designated mandatory CSO unless the services are designated optional or an exception has been granted. The policy roles, responsibilities and relationships in the provision and receipt of common services respectively by CSOs and their clients are governed by the Treasury Board's policy on common services. This part addresses more detailed aspects of the CSO-client relationship.

8.9.1 Details of the CSO-client relationship will normally be covered in general memoranda of understanding (MOU) applicable to the CSO and its client departments. These may be adjusted to suit particular CSO-client agreements. Acquisitions of a special or significant nature may require specific MOUs and more detailed treatment such as that outlined in the policy on Major Crown Projects. Clients are generally responsible for determining what they want, where and when; the CSO is normally responsible for determining how services will be provided to meet the needs of clients.

8.9.2 In terms of life-cycle management, this means that:

- a. *requirements definition* is, in varying degrees, a client responsibility depending on government policy and the type of goods or services. By and large, the more technically complex, special, or unique the requirement, the more it will be a client responsibility to define; conversely, the more common an item, the less need for client input except, for example, to specify the quantity;
- b. acquisition is the CSO responsibility;
- c. use is the client responsibility;
- d. disposal of goods is the CSO responsibility.

This does not mean each party functions in isolation. On the contrary, in the MOU it is essential that there be well-established lines of communication at all stages in the life-cycle, reflecting the CSO-client division of responsibilities.

8.10 Energy Management

8.10.1 The Treasury Board has authorized any contracting authority to enter into and amend a service contract to acquire energy services pursuant to the Federal Building Initiative Policy, which may include energy supply, energy efficiency improvements, management services, energy management monitoring and training, if the total under the contract, including any amendments does not exceed \$25 million on

condition that the their first energy management contract over \$1 million is submitted to the Treasury Board for approval. See Appendix O.

8.11 Lobbyists and Contracting

8.11.1 Contractors who do business with the government must not retain lobbyists whom they pay on a contingency basis. This means that lobbyists must not be paid a fee or compensation related to the value of the contract. If lobbyists are retained in connection with a proposed or actual contract with the Crown, they should be paid on a fee for services or retainer basis. See Appendix M.

9. Best value

9.1 General

9.1.1 As stated in the policy, the objective of government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people. Inherent in procuring best value is the consideration of all relevant costs over the useful life of the acquisition, not solely the initial or basic contractual cost.

9.1.2 The clear identification of the requirements associated with the decision to contract is of primary importance. There are acquisitions in which the requirements and specifications are clear, the records of likely suppliers are relatively uniform and discretionary judgement is at a minimum; price or cost is therefore the primary consideration. However, other procurements call for greater judgement and it is unwise to focus simply on price or lowest initial cost (in recognition of this fact, the higher competitive authorities may be used for service contracts in which the lowest or best value bidder is selected – see definition of competitive contract in Appendix A). Often, the goods or services offered by different suppliers are not identical. Assessments and trade-offs should be made between different performance characteristics, costs, dates of delivery, service, follow-on procurement and logistic support. Equally important are those cases in which a product or facility has been designed to meet specific government requirements. In such instances, detailed analysis of materials and components in terms of their function and price may be needed before the contracting process. This should clarify the requirement which should, in turn, result in best value.

9.1.3 The analysis necessary to achieve best value should not be confined to the actual procurement process; it should begin in the planning and appraisal of alternatives and continue through the definition of requirements which would include assessment and award criteria, evaluation of sources, selection of contractor, preparation, negotiation, execution and award of contract, contract administration and post-contract evaluation. Sophisticated evaluation techniques, such as cost/benefit analysis, may be needed to define the best combinations of quality, service and time considerations, at the lowest total cost over the useful life of the acquisition.

10. Bidding and selection

10.1 The Government Contracts Regulations

10.1.1 As required by Section 5 of the *Government Contracts Regulations*, the contracting authority is to solicit bids before any contract is entered into. The competitive approach in determining a contractor should therefore be the norm. Because it is not always possible, practical, or cost effective to seek bids for every proposed contract, Section 6 of the *Government Contracts Regulations* permits certain exceptions.

10.1.2 Departments and agencies should not accept bids from one another or from the provinces, municipalities, territories or Crown Corporations unless the department, agency or Crown Corporation bidding is authorized by policy or statute. Departments and agencies may, pursuant to section 3 of the Contracting Policy, arrange transactions that involve the transfer of goods, services or real property between departments, Crown Corporations, provinces, municipalities and the Territories.

10.2 Exceptions

10.2.1 Section 6 of the *Government Contracts Regulations* contains four exceptions that permit the contracting authority to set aside the requirement to solicit bids. These are:

- a. the need is one of pressing emergency in which delay would be injurious to the public interest;
- b. the estimated expenditure does not exceed
 - in the case of a goods contract, \$25,000,
 - in the case of a contract to be entered into by the Minister for International Development for the acquisition of architectural, engineering or other services required in respect of the planning, design, preparation or supervision of an international development assistance program or project, \$100,000,
 - in the case of a contract for the acquisition of architectural, engineering or other services required in respect of the planning, design, preparation or supervision of the construction, repair, renovation or restoration of a work, \$100,000, and
 - in the case of any other contract to which these Regulations apply, \$40,000;
- c. the nature of the work to be contracted for is such that it would not be in the public interest to solicit bids; or
- d. only one person or firm is capable of performing the contract.

10.2.2 In exception (a), a pressing emergency is a situation where delay in taking action would be injurious to the public interest. Emergencies are normally unavoidable and require immediate action which would preclude the solicitation of formal bids. An emergency may be an actual or imminent life-threatening situation, a disaster which endangers the quality of life or has resulted in the loss of life, or one that may result in significant loss or damage to Crown property.

10.2.3 Exception (b) sets specific dollar limits below which a contracting authority may set aside the competitive process. However, contracting authorities are expected to call for bids whenever it is cost effective to do so. When the proposed contract is estimated to exceed the dollar limits, the contracting authority is to call for bids.

10.2.4 Exception (c) should normally be reserved for dealing with security considerations or to alleviate some significant socio-economic disparity. For example, the preservation of a certain source of supply may be necessary to ensure that future needs of government can be met. This exception should be

invoked only with the approval of senior management as delegated by the contracting authority (the minister).

10.2.5 Exception (d) sets competitive bidding aside when only one person or firm can do the job. This exception is quite definitive and should be invoked only where patent or copyright requirements, or technical compatibility factors and technological expertise suggest that only one contractor exists. This exception should not be invoked simply because a proposed contractor is the only one known to management.

10.2.6 Any use of the four exceptions to the bidding requirement should be fully justified on the contract file or, where applicable, in submissions to the Treasury Board. Even if a proposed directed contract (see Appendix A) for goods and services qualifies under one of these four exceptions, the contracting authority is encouraged, whenever possible, to use the electronic bidding methodology to advertise the proposed award through an Advance Contract Award Notice (ACAN). If no statements of capabilities meeting the requirements set out in the ACAN are received within fifteen calendar days, the proposed contract is deemed to be competitive and may be awarded using the electronic bidding contracting authority.

Should the contracting authority have to seek the Treasury Board's approval to award such a contract, it should be noted that the Treasury Board cannot approve a directed contract which does not meet at least one of the four exceptions. In such cases, an exception to the Regulations by means of an Order In Council would be required.

10.2.7 As required by the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*, the contracting authority shall solicit bids before any contract over the respective agreements thresholds is entered into. Because it is not always possible to seek bids for every proposed contract, the following exceptions to bidding are permitted.

10.2.8 The *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade* permit the contracting authority to set aside the requirement to solicit bids under the following conditions:

- a. in the absence of tenders in response to an open or selective tender, or where the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where the tender submitted comes from suppliers that do not comply with the conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
- b. for works of art, reasons connected with protecting patents, copyrights, other exclusive rights, or proprietary information or where there is an absence for technical reasons, the goods or services can be supplied by a particular supplier and no reasonable alternative or substitute exists;
- c. in so far as is strictly necessary where, for reasons of extreme urgency brought about by events the contracting authority could not foresee, the goods or services could not be obtained in time by means of open or selective tendering procedures;
- d. for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the

- contracting authority to procure equipment or services not meeting requirements of interchangeability with existing equipment or services, including software to the extent that the initial contract for the software was covered by the agreements;
- e. where a contracting authority procures a prototype or a first good or service that is developed at its request in the course of and for a particular contract for research, experiment, study or original development. Original development of a first good may include limited production to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be competed, where applicable;
 - f. for goods purchased on a commodity market;
 - g. for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers, or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;
 - h. for a contract to be awarded to the winner of a design contest, as long as the contest is:
 - i. organized in a manner consistent with the principles of openness and fairness and is publicly advertised to suitably qualified suppliers to participate in the contest (For procurements subject to NAFTA only, the design contest is specifically architectural);
 - ii. organized so that the design contract is awarded to the winner;
 - iii. judged by an independent jury (For procurements subject to AIT only, conditions for an independent jury are not required);
 - i. where a contracting authority needs to procure consulting services regarding confidential matters, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest (NAFTA and/or AIT only).

10.2.9 In addition to the preceding exemptions, the following are exemptions to bidding for procurement subject to WTO-AGP only:

- a. when additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the contracting authority needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and be significantly inconvenient to the contracting authority. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract; and
- b. for new construction services involving repeating similar construction services that conform to a basic project for which an initial contract was awarded in accordance with the proper procedures for which the contracting authority has indicated in the notice of intended contracts concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services.

10.2.10 In addition to the exemptions listed in 10.2.9, the following are exemptions to bidding for procurement subject to AIT only:

- a. where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the Party and the organization includes rules for awarding contracts that differ from the obligations set out in Chapter 5 of the AIT;
- b. where construction materials are to be purchased and it can be demonstrated that transportation costs and technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete to build or repair roads;
- c. where normal procurement procedures would interfere with a Party's ability to maintain security or order or to protect human, animal or plant life or health;
- d. where only one supplier can meet the requirements of a contract, the procurement is exempt from the AIT in the following circumstances: for procuring goods or services, the supply of which is controlled by a supplier that is a statutory monopoly;
 - i. for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
 - ii. for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
 - iii. for the contracts of subscriptions to newspapers, magazines or other periodicals; and
 - iv. for procuring real property.

10.2.11 Under the AIT all services are covered except the following:

- a. services that in the province issuing the tender may, by legislation or regulation, be provided only by any of the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, chartered accountants, lawyers and notaries;
- b. transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;
- c. services for sporting events procured by organizations whose main purpose is to organize such events;
- d. services of financial analysts or the management of investments by organizations that have such functions as a primary purpose;
- e. financial services respecting the management of government financial assets and liabilities (i.e., treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
- f. health and social services; and
- g. advertising and public relation services.

10.2.12 The following are excluded from the AIT:

- a. procuring goods intended for resale to the public;
- b. procuring goods and services or construction purchased on behalf of an entity not covered by the AIT;
- c. procuring from philanthropic institutions, prison labour or persons with disabilities;

- d. procuring contracts between the federal and provincial governments;
- e. procuring goods services or construction purchased for representational purposes outside the territory of a Party of the AIT;
- f. procuring any goods the interprovincial movement of which is restricted by laws consistent with the AIT;
- g. procuring subscriptions to newspapers or other periodicals.

10.3 Acquisition

10.3.1 As stated in Section 4, Policy requirements, Contracting authorities are to ensure that:

- a. work descriptions or specifications are to be defined in terms that accommodate the use of the competitive process whenever feasible, result in best value in meeting the need and establish, in advance, what is required of the supplier to perform the contract (requests for contracting actions should avoid specifying "sole-source");
- b. whenever practical, an equal opportunity to compete exists for all firms and individuals, providing that they have, in the judgement of the contracting authority, the technical, financial and managerial competence to discharge the contract and meet, where appropriate, criteria established by overall national policies and objectives;
- c. where not prohibited, under the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement* and the *Agreement on Internal Trade*, criteria are to be established to encourage and assess socio-economic factors in relation to the total cost of a contract before bids are solicited, and solicitation documents are to give notice that socio-economic factors are to be used to assess bids when they are received.

Assessment and award criteria must be spelled out in the solicitation document.

10.4 Requirements definition

10.4.1 Best value is not confined to the contractual process; it is equally important at the requirements definition stage. For many acquisitions, especially for Major Crown Projects, it is at this earlier stage that best value may be achieved. Trade-offs should be made among factors such as quality, service, cost, procurability, and socio-economic considerations linked to a particular industry or region of the country. Quality and the desired performance level should be related to intended use. The most desirable technical quality or suitability is not necessarily the most desirable procurement because it may not be the most economical. In complex acquisitions, a cost/benefit analysis may balance technical quality against such factors as initial and operating costs, economic life, service, maintenance and repair.

10.4.2 Best value may be promoted if performance specifications are stressed; this avoids over-defining the requirement from a technical point of view. The custom of the trade, the effect of the competitive process and the different legal liabilities associated with them may affect the choice between defining a requirement in terms of detail or performance. A requirement defined in terms of detail (e.g., type and level, quality, material or method of workmanship) will often result in legal liability for defects shared with the contractor. On the other hand, a requirement defined in terms of performance normally results in the liability borne by the contractor alone for achieving the specified performance.

10.4.3 Departments and agencies should use nationally or internationally-recognized standards whenever possible and ensure that the requirements definition complies with applicable federal

legislation, such as that relating to hazardous products and environmental protection. In the absence of an appropriate standard, it may be economical to use trade names or equivalents in defining requirements for minor or infrequent procurements. When this is done, departments and agencies should include all available trade names or equivalents in the requirements definition. The appropriate common service agency can be very helpful here.

10.5 Selection

10.5.1 Requirements should be defined and specifications and estimates established before bids are solicited and contracts let, so that all prospective contractors are treated equally. In acquiring complex capital equipment, construction or services, other procedures may help control time, cost and performance. Some of these are described below. The procurement method chosen should be indicated, with supporting justification, when contract approval is sought, whether within a department or agency or from the Treasury Board. Adequate specification details should be available to all interested or qualified firms.

10.5.1a Under the *North American Free Trade Agreement* and the *World Trade Organization – Agreement on Government Procurement*, technical specifications laying down the characteristics of the products or services to be procured, such as quality performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by the contracting authority, shall not be prepared, adopted or applied to create unnecessary obstacles to international trade. Technical specifications prescribed by contracting authorities shall, where appropriate:

- a. be in terms of performance rather than design or descriptive characteristics; and
- b. be based on international standards, where such exist; otherwise, on national technical regulations, recognized standards, or building codes.

10.5.1b Under NAFTA and WTO-AGP, there may be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

10.5.1c As required by NAFTA and WTO-AGP, contracting authorities shall not seek or accept, in a manner which would have the effect of precluding competition, advice that may be used to prepare specifications for a procurement from a firm that may have a commercial interest in the procurement.

10.5.2 *Traditional method*. When a project is not complex and there is no significant interaction between the specification and the implementation phases, the design, specification, or requirement definition is completed separately, to the stage where the cost to implement can be accurately estimated. A contract may be awarded that involves only normal business risks. Departures from this traditional method may be justified if, for instance:

- a. the extent to which time or other circumstances preclude defining all significant requirements before contracting;
- b. the extent to which the requirement is beyond the state of the art;
- c. the extent to which specifications do not represent standard commercial practice and no firms routinely provide the service; or

d. industry contributions to the requirement are needed.

10.5.3 *Developer proposal*. Here a contractor agrees to carry out a project jointly with the government which may contribute certain financial or technical resources. The project benefits the contractor beyond the contract price paid. This approach is warranted when the requirement can be obtained at reduced cost to the taxpayer or when benefits connected with other government socio-economic objectives are greater.

10.5.4 The following should be evaluated before proceeding:

- cost/benefit justification,
- socio-economic benefits,
- basis of selecting the contractor,
- description of the management system proposed,
- division of responsibility between department and contractor, and
- division of benefits between government and contractor.

10.5.5 *Design/build or total package procurement*. Here a firm-price contract is awarded based on a performance specification and the contractor is expected to complete a design, construct a facility or manufacture a product or perform a service. This method is warranted for relatively simple technical requirements where the need could respond to routine solutions and no extraordinary risk is involved in working within a firm price. Economies of price or of government effort may be possible by transferring detail specifications or design responsibilities completely to the contractor.

10.5.6 The following should be evaluated before proceeding:

- the degree of responsibility transferred to the contractor;
- the estimated cost under this approach compared to the traditional method; and
- the benefits expected from internal cost or time savings, design improvements or better performance.

10.5.7 *Phased contracting*. Here the overall requirement may be satisfied in stages. For example, separate production, service or construction contracts may be awarded to implement specific phases or components of a requirement. Individually, the separate contracts may be straightforward and may be handled under the traditional method. However, coordinating the contracts may involve considerable complexity. For example, system engineering techniques may be needed to ensure the individual contracts mesh properly and meet overall system performance objectives. This approach is warranted when the time that is likely to be saved has a value beyond the potential cost of the risk of beginning work before all of the requirements specifications or designs are completed.

10.5.8 The following factors should be evaluated before proceeding:

- the benefits of earlier completion or delivery;
- the related risks and contingent cost allowances; and
- the management structure proposed. For example, this may include construction management or project management.

10.5.9 *Flexible price contracting*. Sometimes because of unknown factors or postponed decisions, the requirements definition will remain flexible in its interpretations or details of the proposed work will be incomplete. A price basis may be formulated that caters to the unknown factors and/or the implications

of the postponed decision, while ensuring that costs are controlled and value is received. Basis-of-price options are outlined in article 10.6. This method is warranted when early completion of the work or the state of the art do not permit firmer arrangements before contracting or when the phased contracting method would be impractical. This is typical of research and development, for instance, where the phases of the work are highly interdependent.

10.5.10 The following factors should be considered before proceeding:

- clear identification of the significant technical or other factors which, being unknown, constitute the basis for proceeding with this method;
- cost and time estimates for resolving the unknown factors, together with an assessed probability of their accuracy;
- likelihood of resolving unknown risks before committing major expenditures on other areas of the requirement; and
- the kinds of price formulas and management techniques that will best ensure adequate control over cost, time and performance under the specific circumstances.

10.5.11 *Standing Offer*. As defined in Appendix A, a standing offer is an offer from a potential supplier to supply goods, services or both, on the pricing basis and under the terms and conditions stated in the standing offer. Standing offers are established by competitive bidding or negotiation. A separate contract is entered into each time a call-up is made against a standing offer.

10.5.12 Because of the nature of a standing offer, quality specifications may be predetermined but it is usually not possible to give suppliers more than an estimate of the quantity that will ultimately be purchased under each call-up.

10.5.13 The standing offer method may be the best approach when there are many users ordering the same item or definable service across government and the goods or services are commercially available from local suppliers. The speedier procurement and the price advantages may be further enhanced by reduced administrative paperwork, and, in the case of materiel, the use of existing industry distribution facilities will eliminate the need to warehouse large inventories.

10.5.14 Standing offers are generally established by common service agencies for goods and services widely used by other government departments and agencies. However, all contracting authorities should consider the standing offer method to satisfy repetitive requirements.

10.6 Establishing price

10.6.1 The competitive process is the normal way to establish best value and price. However, it may be set aside and price established by other means.

10.6.2 The pricing of a requirement depends on how accurately it is defined. To demand an unduly firm price, in a situation where costs cannot be known accurately in advance, is to invite excess profit or loss to the contractor. Correspondingly, an unduly flexible price, for a requirement that may be defined accurately, removes some of the advantages of competition and could encourage inefficiency in contractors at government expense. It is equally important to good contract pricing:

- that the requirements definition be as complete as circumstances permit;
- that the price basis chosen be appropriate to that level of completeness; and

- that a bid price not consistent with historical norms or the majority of the bids received, be verified with the bidder prior to accepting that bid.

10.6.3 The following methods all accommodate competition:

- fixed lump sum,
- fixed unit price,
- target price, ceiling price and incentive fee formula,
- target price and incentive fee formula without ceiling price, and
- fixed time rate.

10.6.4 If it is other than a fixed lump sum, the price should clearly state whether a ceiling price is intended. Where applicable, the contract should state the limit beyond which the contractor must not spend without prior approval through a contract amendment. Ambiguity about whether a ceiling or a limitation of expenditure applies is a frequent cause of dispute.

10.6.5 If defining the requirement is so difficult that competition would not be meaningful, it may be necessary to use cost-plus-a-fixed-fee or cost-plus-a-percentage-of-cost as a basis of price. The latter should be avoided if at all possible and negotiation should continue until the contracting authority is sure that a satisfactory basis for contracting has been achieved.

10.6.6 When negotiating with more than one firm, care should be taken that all are treated fairly and impartially. The negotiations should not become an auction of the contract, as firms progressively improve their proposals in the light of information about the position of other firms. The confidentiality of each firm's negotiating position is to be assured.

10.6.7 Occasionally, a contract may be awarded with the price to be negotiated later when certain requisite information becomes available. The information may comprise important elements of the requirements definition that cannot be completed in time, or the cost of the first part of the order is needed as a basis for negotiating a firm price for the balance. This form of contract should be considered as a substitute for a cost-plus-fixed-fee contract when there is a definite prospect that the price basis can be improved as the work proceeds.

10.6.8 The competitive process is usually a reliable method because a contractor will include in the bid elements representing costs, overhead, profit and contingencies. However, in some situations such as unstable market conditions, one or more elements may be subject to such extreme fluctuations in price that neither buyer nor seller would be confident in accepting a fixed price over an extended period of time. While some commodities are subject to continuing price fluctuations, contracting specialists usually know what these commodities are and have developed standard techniques to mitigate the risks.

10.6.9 If the price of normally stable commodities and services begin to fluctuate, the contracting authority should try to reduce the risk while minimizing the erosion of fixed prices by:

- a. postponing the procurement;
- b. using substitute materiel;
- c. giving contractors advance information on requirements in order to benefit from their ability to control costs by planning and making full use of the commodity futures market in appropriate circumstances;
- d. reducing the period of term contracts, or the quantities ordered on production contracts;

- e. increasing production rates to compress the duration of contracts;
- f. reducing the administrative time allowed in the procurement process (solicitation, award decision, issuance of contract and authority to commence work);
- g. procuring the unstable element separately (in the construction industry this technique is known as pre-tendering.); and
- h. isolating the unstable element and providing for price adjustment according to a reliable, predetermined formula such as an established economic index.

10.6.10 *Multi year/phase contracts.* All contracts should specify the rate(s) of payment or unit price(s) for the entire period and/or quantity required, including all phases and specified option periods or quantities. When this is not possible, as with some multi-phase, multi-year or renewable (option year) contracts, payments for each year or phase should be based on a pre-agreed rate or formula that is spelled out in the "terms of payment". In addition, measures should be included to ensure the contractor performs in accordance with the contract and to avoid disputes. Appropriate increases for time periods or quantities that cannot be established when the contract is signed should be defined in the terms of payment using a rate or formula that may depend on data that can be established only through audits, rate negotiations or limited escalation clauses based on appropriate indices.

10.6.11 *Federal taxes.* Contracts and requests for bids or proposals should require the bidder or contractor to include an allowance for all applicable taxes, permits and fees. It may also be wise to include a provision to cover tax rebates (i.e., where taxes, allowed in the price, were not paid, owing to the grant of a tax rebate).

10.6.12 The request for bids or proposals should provide for tax increases or decreases arising from changes in the appropriate legislation that are announced after a bid has been submitted. This will allow changes to the cost elements to be reflected in the actual contract. Tax increases or decreases which are announced and put into effect after the contract is awarded may be handled by an amendment to the contract.

10.6.13 *Provincial and municipal taxes and fees.* Agreements have been reached between the federal government and several provincial governments to implement a reciprocal taxation program. The *Comptrollership* volume of the *Treasury Board Manual* describes the relevant administrative procedures.

10.6.14 *Foreign taxes.* The circumstances surrounding the payment of foreign taxes are variable and complicated. Whenever this possibility arises, contracting authorities should seek the advice of the Department of Justice before a contract is signed in order to avoid difficulties later. Bidding documents, requests for proposal and contracts should require the tenderer or contractor to include in the price an allowance for all applicable taxes, permits and fees.

10.6.15 Where applicable, bidders should make provision for appropriate travel and living expenses related to the proposed contract. These travel and living expenses should follow the contractor's established policy. However, as stated in article 4.2, Related requirements, under no circumstances may the amounts paid exceed the maximum permitted in the [*National Joint Council Travel Directive*](#). Travel and living expenses are part of the total cost of the contract.

10.6.16 Contracting authorities shall not structure a procurement, select a valuation method, or divide procurement requirements in order to avoid the obligations of the *North American Free Trade Agreement*, the *World Trade Organization - Agreement on Government Procurement* and the *Agreement on Internal Trade*.

10.6.17 In determining the value of a contract under the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement* and the *Agreement on Internal Trade*, the valuation shall take into account all forms of remuneration, including premiums, fees, commissions, taxes and interest receivable.

10.6.18 Under the *North American Free Trade Agreement* and the *World Trade Organization – Agreement on Government Procurement*, if an individual requirement for a procurement results in the award of more than one contract or a contract awarded in separate parts, the basis of valuation shall be either:

- a. the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
- b. the estimated value of the recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

10.6.19 Under NAFTA and WTO-AGP, in cases of contracts for lease, rental or hire purchase of products or services, or in the case of contracts that do not specify a total price, the basis for valuation shall be:

- a. in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value; and
- b. in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

10.6.20 The value of the requisition including the Goods and Services Tax is to be used when determining whether or not a procurement is subject to a national or international trade agreement. For purposes of determining coverage, a procurement is considered to be one for goods, services, or construction, based on which represents more than 50 per cent of the estimated value of the requisition.

10.7 Soliciting bids and selecting a contractor

10.7.1 *Equal opportunity for all contractors.* In accordance with the policy statement to reflect fairness in spending public funds and the requirements under the trade agreements, the method of procurement used for a particular acquisition must, within the limits of practicality, give all qualified firms an equal opportunity for access to government business. For all procurements, especially those subject to the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*, all parties must be given an equal opportunity to access government business. Therefore, contracting authorities should ensure that potential contractors are identified. Whenever projects are advertised, the area of coverage should not be so narrow that it inhibits free competition. If fewer than three respondents are reached by established advertising practices, the advertising coverage or bid solicitation should be increased. Contracting authorities that keep source lists from which bids are invited, may find it in their interests to establish a regular way to inform industry of this practice. This might take the form of periodic briefings to industry associations accompanied by adequate publicity, departmental public information brochures adequately circulated, newspaper and trade journal advertisements, electronic media advertisements, etc. For example, a contracting authority can use, inter alia, the electronic bidding system, and may supplement this by

direct solicitation in order to maximize the involvement of the most qualified suppliers of goods and services.

10.7.2 Contracting authorities should note that when a combination of solicitation processes is used together, it is essential that they

- a. commence and close on the same dates;
- b. provide potential suppliers with the same information; and
- c. impose identical obligations on these suppliers.

10.7.3 The following is a description of the various selection methods that may be used.

10.7.4 *Advertisement in the public press.* This method is appropriate:

- a. when it is a custom generally followed by the trade involved; or
- b. when the contracting department or agency considers it the most effective means of ensuring adequate competitive response.

10.7.5 *Mailing lists.* This method is appropriate:

- a. to support national policies and objectives;
- b. when it is customary in the trade for suppliers to be listed by potential buyers; or
- c. when goods or services in common commercial supply are involved and it can be assumed that most firms in the business can meet the requirements.

10.7.6 *Source lists.* For procurements subject to the *North American Free Trade Agreement* and the *World Trade Organization – Agreement on Government Procurement*, source lists may be used for selective tendering. Contracting authorities may also establish source lists of competent suppliers that are representative of the suppliers of the required goods or services. When the source list contains many firms, they should be pre-selected in rotation through the list, from procurement to procurement, in an equitable manner. Electronic media may be used to advertise in order to develop an appropriate list of suppliers. In addition, rotational selection of qualified individuals or firms by computer may also be used.

10.7.6a Under the *Agreement on Internal Trade*, source lists shall:

- a. include information in its policies, procedures and practices describing the circumstances and manner in which the source list is used and any qualification criteria that a supplier must meet to register on the source list;
- b. provide written confirmation of registration to any supplier that requests registration on the source list or indicate the qualification criteria that were not met; and
- c. on request by any Party of the AIT, provide that Party with the tenders notice and the list of suppliers that will be invited to bid on a specific tender.

10.7.7 *Solicitation by electronic media.* Electronic media may be used to solicit bids or to give public notice of (i) a call for bids in respect of a proposed contract or (ii) an intention to award a directed contract (using an Advance Contract Award Notice). The use of electronic media enables instantaneous notification of suppliers of the opportunity to bid and facilitates bid submission by those who are interested. This method is particularly suitable as an expeditious approach to competitive procurement. Depending on the circumstances, this sourcing method may be supplemented by the use of more

traditional methods of calling for bids in newspapers or trade publications as well as source lists where, in the judgement of the contracting authority, they are necessary to ensure adequate competition.

10.7.8 *Electronic Bidding*. This methodology is appropriate:

- a. to support the government's policy of enhanced access, competitive procurement and fairness;
- b. for competitive procurements of goods by the Department of Public Works and Government Services at a suggested threshold total value of at least \$25,000;
- c. for competitive procurements of services (and goods, where authority has been delegated by the Minister of Public Works and Government Services) by contracting authorities other than the Department of Public Works and Government Services at a suggested threshold total value of \$100,000, and at lower values if appropriate;
- d. to publish an Advance Contract Award Notice (ACAN). An ACAN allows departments and agencies to post a notice, for no less than fifteen calendar days, indicating to the supplier community that it intends to award a good, service or construction contract to a pre-identified contractor. If no other supplier submits, during the fifteen calendar day posting period, a statement of capabilities that meet the requirements set out in the ACAN, the competitive requirements of the government's contracting policy have been met. Following notification to suppliers not successful in demonstrating that their statement of capabilities meets the requirements set out in the ACAN, the contract may then be awarded using the Treasury Board's electronic bidding authorities.

If other potential suppliers submit statements of capabilities during the fifteen calendar day posting period, and meet the requirements set out in the ACAN, the department or agency must proceed to a full tendering process on either the government's electronic tendering service or through traditional means, in order to award the contract.

- e. for procurements subject to the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement* and the *Agreement on Internal Trade*.

10.7.9 For most contracting authorities, using electronic bidding methodology to solicit and invite bids for services means that both their contract entry and amending authorities are increased (refer to Appendix C for greater detail).

10.7.10 The approved national electronic bidding and information service is the Government Electronic Tendering System (GETS). GETS affords supplier subscribers access to government procurement opportunities. To advertise bid opportunities electronically, contracting authorities may give public notice by means of:

- a. the Government Electronic Tendering System; or
- b. such other departmental procurement methods as may be approved by the Treasury Board.

10.7.11 Deleted.

10.7.12 Deleted.

10.7.13 *Advance Contract Award Notice (ACAN)*. An Advance Contract Award Notice (ACAN) allows departments and agencies to post a notice, for no less than fifteen calendar days, indicating to the supplier that it intends to award a good, service or construction contract to a pre-identified contractor.

This electronic bidding procedure can be advantageously used to fulfill the requirement of section 5 of the Government Contracts Regulations to solicit bids and is appropriate:

- a. when the contracting situation results from one of the exceptions identified in section 6 of the *Government Contracts Regulations*, which permit the setting aside of the requirement to solicit bids; and
- b. to inform the public that the contracting authority is proposing to award a contract to a pre-identified supplier, especially in situations involving the services of former public servants.

10.7.14 While an ACAN is always published using an approved electronic procurement information service, contracting authorities may supplement the electronic notice in order to inform the public by the traditional approaches, such as mailing lists, notification in trade publications and the public press, etc.

10.7.15 An ACAN is to:

- a. define the requirements or the expected results of the contract, so that other potential suppliers can determine if they possess the capability to satisfy them;
- b. identify the proposed contractor;
- c. provide the reason for the proposed directed award; and
- d. if possible, provide an estimate of the cost of the proposed contract, where this will not prejudice negotiations with the proposed contractor. (Further guidance on what should be included in an ACAN is available in the Guide for Managers – Using Advance Contract Award Notices (ACANs)).

10.7.16. If no other supplier submits, during the fifteen calendar day posting period, a statement of capabilities that meets the requirements set out in the ACAN, the competitive requirements of the contracting policy have been met. Following the notification of suppliers not successful in demonstrating that their statement of capabilities meets the requirements set out in the ACAN, the contract may then be awarded using the Treasury Board's electronic bidding authorities.

10.7.17 If other potential suppliers submit statements of capabilities during the fifteen calendar day posting period, and meet the requirements set out in the ACAN, the department or agency must proceed to a full tendering process on either the government's electronic tendering service or through an traditional means, in order to award the contract.

Advance Contract Award Notices shall be posted for no less than fifteen calendar days on the government's electronic tendering system. Statement of capabilities must be submitted within the same fifteen calendar days. Where the ACAN is subject to NAFTA or the WTO-AGP, the fifteen calendar days shall commence on the date the ACAN is published.

With respect to statements of capabilities that are not accepted, the decision to reject will be impartial and independent in that it will not be made by the same official(s) who originally decided to proceed through an ACAN process.

For further information consult the Guide for Managers – Best Practices for Using Advance Contract Award Notices (ACANs).

10.7.18 *Pre-selecting bidders*. This method is appropriate:

- a. when goods and services not in common commercial supply are involved and special government specifications apply;

- b. when the cost of bidding is so significant that it would be unfair to present firms of unknown capability with the risk of disqualification after they have incurred the expense of bidding; or
- c. when, owing to the special nature of the requirement, the competence of the low bidder must be verified before making the award and, for reasons of administrative cost, it is desirable to keep the number of such pre-award verifications to a minimum by inviting only firms with established reputations.

10.7.19 Pre-selection of bidders does not preclude a contracting authority from competitive contracting. In this situation, a contracting authority may implement the policy of competitive bidding by then seeking valid bids from the qualified bidders.

10.7.20 *Pre-qualification of bidders.* When the size or complexity of a project necessitates further special assurance of the contractor's ability, all necessary tests of the competence of prospective contractors may be made in advance. Bids are then invited only from the firms that have qualified. The possibility of disqualifying a firm after it has incurred a considerable expense in bidding on a large special project is thereby reduced or eliminated.

10.7.21 A version of this method, suitable for manufacturing certain items, is to pre-establish a list of qualified products which, through the testing of samples, have met the requisite standards of quality. A qualified products list is particularly suitable for selecting bidders for manufactured products when the quality requirements exceed the normal commercial standards.

10.7.22 *Two-step proposal (including price competition).* This method is used when, owing to the special nature of the requirement and the lack of a detailed definition of the specifications, the selection is to be based largely on the technical and managerial proposals submitted. Final selection among the firms that have submitted acceptable technical and managerial proposals is then made on the basis of price. One of the methods above may be used to choose firms to be invited. Pre-qualification is frequently the most appropriate in these circumstances.

10.7.23 Because of the infinite variety and complexity of contracting situations, it is difficult to dictate absolute norms. Each case should be examined on its own merit to determine whether price should play a dominant or secondary role in the selection process.

10.7.24 *Proposal competition.* Architectural, engineering, research, development and consulting services typify when a contractor should be selected for the level of performance offered rather than for price alone. Usually a very comprehensive proposal is requested to elicit all of the contractor information needed for an objective appraisal of the offers received.

10.7.25 The merits of each proposal should be compared using a weighted list of the criteria to be met. These criteria should identify accurately all the performance elements significant to the success of the project and should measure both the competence of the firm and the worth of its particular technical approach. Competence includes, for example, such factors as managerial structure, key personnel, prior industrial experience, facilities and financial strength. Technical worth includes the firm's proposed work breakdown structure, identification of key technical problems and outlines of solutions, proposed schedule of milestones, cost, quality and time control systems to be used, and the like, depending on the nature of the requirement. Any additional terms and conditions the bidder may demand should also be considered. Finally, the expected price could be weighted so that it carries the appropriate degree of importance relative to the other factors. Service contracts, where a best value selection is made based on the above, are subject to the higher competitive approval levels detailed in the Treasury Board

Contracts Directive – see Appendix C. See also the definition of competitive service contracts in Appendix A.

10.7.26 If information on the economic life of the acquisition is obtainable, it is advantageous to include in the criteria a way of comparing operation, maintenance, installation and handling, consumable supplies and other in-use costs. This approach may permit an objective selection of the item most likely to be superior throughout its operating life.

10.7.27 Competing firms should be told the measurement criteria and the weighting assigned to them. Contracting authorities should be aware of successful legal challenges to the contractor selection process. The issue arises from the manner in which evaluation factors are to be used to determine the successful bid. The courts have ruled that the factors and their weighting must be established beforehand and adhered to strictly. They are to be recorded along with the requirements of the contract and included in the bid solicitation. The principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative.

10.7.28 Proposal competitions in which the price element is not included do not meet the definition of a valid bid. Consequently, the competitive authority dollar levels may not be used when the contract is awarded.

10.7.29 *Design competition.* For major public works, the architect and the design of the structure should be selected using a predetermined procedure. When the technical problems are within the state of the art, a design competition may be an appropriate preliminary step to selecting a contractor for a design/make or total package procurement.

10.7.30 *Non-competitive contracts.* When the contracting authority awards a contract under the provision of one or more of the exceptions to the requirement to solicit bids in Section 6 of the *Government Contracts Regulations*, this decision should be recorded, together with the justification.

10.7.31 In order to demonstrate the requirement for access and openness in government contracting, contracting authorities are encouraged to publish an Advance Contract Award Notice (ACAN) for contracts with pre-identified contractors using electronic bidding methodology. If no statements of capabilities meeting the requirements set out in the ACAN are received within fifteen calendar days, the contract is deemed to be competitive and the higher electronic bidding dollar levels apply.

10.7.32 If, as a consequence of a non-competitive contract award, the availability of specified commodities and services is inadequate or their price is deemed to be excessive, then competition needs to be stimulated. In this circumstance, contracting authorities should cultivate additional suppliers by ensuring that all likely firms have been made aware of and are adequately briefed on the extent and probability of continuing government requirements and given all possible help in the form of information and guidance on specifications, qualification approval, manufacturing technology, and the like. A useful technique is to inform the industry of an anticipated requirement and to request a statement of interest and capability through the use of electronic bidding methodology. If electronic bidding procedures are not feasible or if there is a need to supplement them, an expanded direct solicitation (such as an information letter mailed to a list of potential sources, advertisement of the opportunity in trade publications and the public press, etc.) could also be used.

10.7.33 *Qualification of suppliers under the North American Free Trade Agreement and the World Trade Organization – Agreement on Government Procurement.* Contracting authorities must ensure that there is no discrimination between foreign or between domestic suppliers when establishing the qualification criteria. The qualifications procedures shall be consistent with the following:

- a. conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance to provide the supplier adequate time to initiate and, to the extent that it is compatible with efficient operations of the procurement process, to complete the qualification procedures;
- b. conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfilment of the contract in question;
- c. the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the contracting authority;
- d. a contracting authority shall not misuse the process of, including the time required for, qualification to exclude suppliers of another Party from a supplier's list or from being considered for a particular procurement;
- e. a contracting authority shall recognize as qualified suppliers those suppliers of another Party that meet the conditions for participation in a particular procurement;
- f. a contracting authority shall consider for a particular procurement those suppliers of another Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;
- g. a contracting authority that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonable short period of time and that all qualified suppliers included in the list are notified of the termination of the list or of their removal from it;
- h. where, after publication of the Notice of Proposed Procurement, a supplier that is not yet qualified requests to participate in a particular procurement, the contracting authority shall promptly start the qualification procedure;
- i. a contracting authority shall advise any supplier who requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and
- j. where a contracting authority rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the contracting authority shall, on request of the supplier, promptly provide pertinent information concerning the contracting authority's reason for doing so.

10.7.34 For procurements subject to the *North American Free Trade Agreement and the World Trade Organization - Agreement on Government Procurement*, contracting authorities shall

- a. ensure they use a single qualification procedure, except that a contracting authority may use additional qualification procedures where the contracting authority determines the need for a different procedure and is prepared, on request of another Party of the Agreements, to demonstrate that need; and
- b. try to minimize differences in the qualification procedures from other contracting authorities.

10.7.35 Contracting authorities can exclude suppliers on grounds such as bankruptcy or false declarations.

10.7.36 *Invitation to participate under the North American Free Trade Agreement and the World Trade Organization – Agreement on Government Procurement.* Contracting authorities shall publish an invitation to participate in the appropriate publication for all procurements. The invitation to participate shall take the form of a Notice of Proposed Procurement (NPP) that shall contain the following information:

- a. description of the nature and quantity of the goods or services to be procured, including options for further procurement and if possible:
 - i. an estimate of when such options may be exercised, and
 - ii. in the case of recurring contracts, an estimate of when the subsequent notices will be issued;
- b. a statement as to whether the procedure is open or selective and whether it will involve negotiation;
- c. any date for starting or completing the delivery of the goods or services to be procured;
- d. the address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, the final date for receiving the application and the language or languages in which it may be submitted;
- e. the address to which tenders must be submitted, the final date for receiving tenders and the language or languages in which tenders may be submitted;
- f. the address of the contracting authority that will award the contract and that will provide any information necessary for obtaining specifications and other documents;
- g. a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;
- h. the amount and terms of payment of any sum payable for the tender documentation; and
- i. a statement as to whether the contracting authority is inviting offers for purchase, lease or rental, with or without an option to buy.

10.7.37 For procurement subject to *NAFTA and WTO-AGP*, in the case of selective tendering procedures, a contracting authority that maintains a permanent list of qualified suppliers shall publish annually, in the appropriate publication, a notice containing the following information:

- a. an enumeration of any lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;
- b. the conditions to be fulfilled by suppliers in view of their inscription on the lists and the methods according to which each of those conditions will be verified by the contracting authority concerned; and
- c. the period of validity of the lists and the formalities for their renewal.

10.7.38 For procurements subject to *NAFTA and WTO-AGP*, after the publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, a contracting authority finds that it has become necessary to amend or reissue the notice or tender documentation, the contracting authority shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by a contracting authority to a supplier with respect to particular procurement shall be given

simultaneously to all other interested suppliers and sufficiently in advance so as to provide all suppliers concerned adequate time to consider the information and to respond.

10.7.39 Under NAFTA and WTO-AGP, a contracting authority shall allow a supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

10.7.40 Under NAFTA and WTO-AGP, where a contracting authority does not invite or admit a supplier to tender, the contracting authority shall, on request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

10.7.41 *Call for tenders under the Agreement on Internal Trade.* A notice of a call for tenders shall contain at least the following information:

- a. a brief description of the procurement contemplated;
- b. the place where a person may obtain information and tender documents;
- c. the conditions for obtaining the tender documents;
- d. the place where the tenders are to be sent;
- e. the date and time limit for submitting tenders;
- f. the time and place of the opening of the tenders in the event of a public opening, and a statement that the procurement is subject to the AIT.

10.7.42 In evaluating tenders, subject to AIT, contracting authorities may take into account not only the submitted price but also quality, quantity, delivery, service, the capacity of the supplier to meet the requirements of the procurement and any other criteria directly related to the procurement. The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in evaluating bids and the methods of weighting and evaluating the criteria.

10.8 Receiving bids

10.8.1 Departments must ensure that adequate management controls are in place to protect the integrity of the bidding process and that these management controls ensure receipt, custody, bid opening, and recording are addressed.

10.8.2 Deleted.

10.8.3 Deleted.

10.8.4 Deleted.

10.8.5 Deleted.

10.8.6 A bid or proposal is or non-responsive if it does not meet all the mandatory requirements listed in the Request for Proposal or other solicitation documents and will be rejected.

10.8.7 Bids or proposals that respond to the mandatory requirements but contain a minor aberration may be considered if, in the opinion of the contracting authority's management:

- a. the aberration is trivial or negligible compared to the total cost or scope of the supplies or services being procured;

- b. the presence of that aberration, its removal by negotiation, or its clarification with the bidder could not reasonably be considered prejudicial to the other bidders; and
- c. the decision to accept such bids is fully justified on the contract file.

10.8.8 When the bid solicitation requires the submission of bid security, the amount should be determined by the contracting authority in advance. When the appropriate security has been submitted but the bidder subsequently increases the bid price before the stipulated closing date, the contracting authority may allow the bidder reasonable time to supply any additional security required. A reasonable period may also be given to a bidder to resubmit the security deposit in the appropriate instrument if it was not initially done. When a bidder has submitted less than the exact financial security stipulated, the bid will be considered as non-responsive unless, as stated in article 10.8.7 above, the deviation is negligible, or the circumstances in article 10.8.10 below prevail (see also article 12.11.9).

10.8.9 When only one of a number of bids received in response to a competitive bid solicitation is (considered) valid and the contracting authority determines that fair value to the Crown will be obtained, the contract may be awarded to the one valid bidder and considered competitive (See definitions in Appendix A). In determining the fairness of the single valid bid, the following apply:

- a. Where market prices for a work, product or service similar to those being solicited are readily available, the bid price may be compared with recent prices paid, prices in current price lists or catalogues, or recent prices paid by other organizations (such as government or large private sector corporations).
- b. Where market prices are not readily available or applicable, the previous price paid for an identical or similar work, product, or service (adjusted for inflation), can be compared with the proposed bid or prices. Where such a work, product, or service has not previously been acquired, an acceptable price for the work, product, or service is to be determined based on a reasonable combination of cost, overhead and profit.
- c. In certain instances, the price of the single valid bid may be compared with that of the invalid bids, depending on the reasons for declaring the other bids invalid.

10.8.10 When only one valid bid has been received, that bidder may also be asked to provide price substantiation. If the information provided is not acceptable to the contracting authority, then price negotiation should take place. If the single bidder does not appear to have the requisite financial stability, it may be in the public interest to require the bidder to submit an appropriate form of security before the bid is considered. Another alternative would be to invite new bids.

10.8.11 In the context of article 10.8.9(b) above, the cost(s) of a work, product or service is the sum of the applicable direct and indirect costs which are, or are to be, reasonably and properly incurred and/or allocated, in the performance of the work or provision of the product or service, less any applicable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is applied consistently and is equitable in the circumstances may be used, including standard costs properly adjusted for applicable variances.

10.8.12 A cost may be considered reasonable if, in nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. In determining whether a cost element is reasonable, consideration should be given to:

- a. whether the cost is generally recognized as normal and necessary for the conduct of the supplier's business or the performance of the contract;

- b. the restraints and requirements of such factors as generally accepted sound business practices, arm's-length bargaining, federal, provincial and local laws and regulations, and contract terms;
- c. the action that prudent business persons would take in the circumstances, considering their responsibilities to the owners of the business, their employees, customers, the various levels of government and the public at large;
- d. significant deviations from the established practices of the supplier; and
- e. the specifications, delivery schedule and quality requirements of the particular contract as they affect costs.

10.8.13 As stated in article 4.2, in assessing bids, the following apply:

- a. if there are errors in the mathematical extension of unit price items, the unit prices prevail and the mathematical extension is adjusted accordingly;
- b. if there are errors in the addition of lump sum prices or unit price extensions, the bid is not rejected but the total is corrected and the correct amount reflected in the total bid price;
- c. any bidder affected by mathematical errors should be told immediately and given the corrected bid price.

10.8.14 *Withdrawal of bids.* Customarily the federal government allows bids to be modified or withdrawn before the closing time and date provided that the notification is in written form such as registered letter, telex, or facsimile transmissions. As stated in article 4.2, modifications are not acceptable under any circumstances after bid closing. However, if an offer is made in error or contains a significant and demonstrable error that is made known to the contracting authority, the bid may be withdrawn before acceptance. This reflects the principle of contract law that an offer is not binding if it is made in error or contains an error that is made known to the recipient. The government's model bid bond form contains provisions obligating bonding companies to compensate the Crown for higher costs caused by withdrawals after acceptance. Other types of bid security should provide the same protection.

10.8.15 As stated in article 4.2, the payment provision of a bid bond or other bid security will be invoked if the bidder refuses to execute the contract documents or to provide the specified contract security.

10.8.16 *Bid protests.* Contracting authorities should ensure that protests are resolved quickly and effectively so as not to delay the contracting process. When acting within the scope of its authority and existing statutes and regulations, the contracting authority's action to enter into a contract with a bidder involves the exercise of an administrative power that normally cannot be reviewed by the courts. Consequently, all bid protests, particularly those related to the impartiality of this process, should be referred to senior departmental management for resolution and the resulting decision should be communicated to the concerned or affected parties promptly. Where a bid protest is made pursuant to the provisions of the *North American Free Trade Agreement*, *Agreement on Internal Trade* and the [World Trade Organization – Agreement on Government Procurement](#), the *Canadian International Trade Tribunal Procurement Inquiry Regulations* apply.

10.8.17 *Identical bids.* If identical low valid bids or proposals are received, the contract should be awarded on the basis of best value. The factors below should be used, subject to directives on national policies and objectives that may be issued from time to time. These criteria may be weighted as deemed appropriate by the contracting authority:

- a. a bidder with an overall satisfactory performance record be given preference over a bidder known to have an unsatisfactory performance record;
- b. a bidder in a position to provide adequate after-sales service with a good record in this regard be given preference over a bidder who is not able to provide adequate service or who has a poor record;
- c. when delivery is an important factor, the bidder offering the best delivery date be given preference;
- d. when there are several items included in the bid and the prices on only some of the items are identical, the offer of the firm bidding on the greatest dollar value be given preference; and
- e. when a number of items are included in the bid and one or more firms bid lower on one or more of the items, the firm that bid low on the greatest dollar value be given preference both for the items on which it bid equal prices and for the items on which it bid low.

10.8.18 As stated in article 4.2, departments and agencies are to report to the Department of Industry any identical bids where collusion is suspected or any price so unreasonable that it may have been established to lessen competition or eliminate a competitor.

10.8.19 *Change in scope of work.* When there are changes in the job requirements or in the funds available that reduce the scope of the work, an attempt should be made to negotiate a new price with the successful bidder. If the change in the scope of the work is significant or negotiations cannot be concluded to the satisfaction of the contracting authority, new bids should be invited. For construction contracts, new bids are normally invited from the two lowest bidders on the original bid solicitation. When more than two bidders have bid in the same approximate amounts, consideration should be given to including these firms on the new bid solicitation. For goods and services, it is often the practice to solicit new bids without limiting the field of competition.

10.8.20 If the bidder limits the period of validity of the bid, this should be specified in the offer. When the contracting authority accepts a bid or proposal with some condition e.g., provision of financial security or obtaining security clearance, it may be necessary to establish and specify a period during which the acceptance of the bid remains valid.

10.8.21 *Debriefings.* Debriefings should be provided to unsuccessful bidders on request and should normally include an outline of the factors and criteria used in the evaluation, while respecting each bidder's right to the confidentiality of specific information.

10.8.22 *Forwarding of Tender Documentation by the Entities under the North American Free Trade Agreement and the World Trade Organization – Agreement on Government Procurement.* The respective agreements require that in open and selective procedures, contracting authorities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating hereto.

10.8.23 For a procurement subject to *NAFTA* and *WTO-AGP*, contracting authorities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, as long as such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract. The following procedures shall be followed in receiving tenders:

- a. tenders shall normally be submitted in writing directly or by mail;

- b. where tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tenders made thereby must include all the information necessary to evaluate the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms and conditions of the invitation to tender;
- c. a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;
- d. the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submitting of tenders;
- e. tenders presented by telephone shall not be permitted;
- f. request to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and
- g. the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be administered in a manner that would result in discrimination between suppliers.

10.8.24 The federal government has a strong commitment to serve Canadians better by expanding access to information and services available electronically. It is government policy to establish and manage the use of public key cryptography as a component of the government's common information management and information technology infrastructure and to support electronic alternatives to the use of paper, thereby increasing efficiency and reducing government costs.

- a. Departments must ensure that only secure e-procurement systems that meet government policies are used;
- b. A number of considerations are required before an e-procurement system will be approved, including an assessment of the threat, risk and technological requirements for implementing the e-procurement system. Security, privacy and legal considerations must also be assessed.
- c. As e-procurement systems are introduced to the federal procurement community, it should be noted that for those procurements subject to the trade agreements, contracting authorities must respect the provisions of the trade agreements.

11. Contract award

11.1 Review mechanism

11.1.1 Contracting authorities are encouraged to establish and maintain a formal challenge mechanism for all contractual proposals, including those within departmental authority, those sent to the Department of Public Works and Government Services Canada, and those submitted to the Treasury Board. This mechanism could range from a formal central review board to divisional or regional advisory groups, depending on the departmental organization and magnitude of contracting. Decisions made by these review units should be recorded and available for subsequent internal audits and for the periodic audits or evaluations conducted by the Auditor General or by the Treasury Board Secretariat. Departmental officials appointed to review contracts should include the appropriate senior financial officer as the chairperson in all cases. Others should be from disparate program areas to ensure balance. The appropriate senior departmental personnel officer should be included in the review of contracts for the

services of individuals, and the appropriate senior materiel officer when materiel or materiel-related services are reviewed. Those in a possible conflict of interest situation are to declare themselves and be replaced. Summaries of the contract review proceedings should be provided regularly to deputy heads so that they can determine whether their delegated signing powers are being properly administered.

11.1.2 The review methodology should address such basics as:

- is the proposal within the contracting authorities' legislative mandate?
- are funds available?
- are the competitive requirements of the regulations observed?
- are the departmental signing authorities observed?
- does the proposal have legal clearance where required? and
- is the proposal in line with government policies on bilingualism, employment equity, conflict of interest, etc.?

The review mechanism should also be able to determine if the proposed work is actually required. It is possible that other centres of responsibility within a department or some other government agency has already carried out work that will satisfy the requirement. The review should look at more general considerations, depending on the circumstances such as whether the responsibility centre is the appropriate one to handle the work proposed.

11.2 Approval requirements

11.2.1 *Treasury Board approval.* The establishment of dollar limits above which Treasury Board authority is required is based on the premise that, at some level of size or complexity, the collective judgement of ministers should be brought to bear upon a decision to award a contract. The *Financial Administration Act* envisages prescribed ceilings (see sub-section 41(1)) to provide a central mechanism that ensures that appropriated money is spent effectively.

11.2.2 The powers of the Governor in Council to establish contract ceilings have been delegated to the Treasury Board under P.C. 1986-2746, Dec. 4, 1986.

11.2.3 The Treasury Board has established and periodically revises the contract dollar levels. These levels reflect the desire to permit contracting authorities to carry out their responsibilities while taking contracting risks and the overall interests of the government into account. Appendix C contains the Treasury Board Contracts Directive which specifies the approved levels above which Treasury Board authority is required before entering into a contract. See Appendix H for how to prepare requests for contract approvals, including submissions to the Treasury Board and applications to internal departmental authorities. For the inclusion in submissions of foreseeable amendments to contracts, see article 12.9.3. The total value of any contract should include all related costs e.g., profit, overhead, administration, travel, taxes, etc.

11.2.4 The *Treasury Board Contracts Directive* distinguishes between competitive and non-competitive contracts for determining the contract approval levels delegated to contracting authorities. It also differentiates between the traditional and electronic bidding processes for competitive procurement of goods (where authority has been delegated by the Minister of Public Works and Government Services) and services. By using electronic bidding methodology, a contracting authority increases its authority to

enter into and amend a contract. For contracts that do not fall within the definition of competitive contracts, the non-competitive dollar levels of authority apply.

11.2.5 In many cases, prior approval of the program and related funding is sufficient for departments to proceed to contract. However, program approval does not carry with it implicit authority to enter into contract and, when significant risks and issues are involved, specific review and approval by Treasury Board should be obtained, even though the value of the contract is below the established limit. Treasury Board approval may also be requested for contracts that involve a substantial expenditure or unusual circumstances of general public interest. In addition, Treasury Board participation may be advisable in certain situations where interdepartmental responsibilities are being co-ordinated, when large follow-on contracts may be required, or where other national policies and objectives are related.

11.2.6 Most contracts handled by the common service agencies and departments with major contracting activities are recognized in the Treasury Board Contracts Directive by the higher levels of authority granted. The various dollar levels are reviewed periodically and adjusted to serve the best interests of the government. Special dollar levels may be prescribed by the Treasury Board for specific projects or programs for unique operational needs. The performance of contracting authorities in the above situations will influence decisions on levels of authority.

11.2.7 *Contract splitting.* Contracting authorities must not split contracts or contract amendments in order to avoid obtaining either the approval required by statute, the Treasury Board Contracts Directive or appropriate management approval within the department or agency.

11.2.8 Before entering into or amending a contract, approvals as specified in the Treasury Board *Contracts Directive* are required.

Situations where prior Treasury Board approval should be sought include, but are not limited to:

- a. making advance payments if the contract or amendment requires Treasury Board approval (see section 8(2) of the *Government Contracts Regulations*, Appendix B);
- b. for departments other than Public Services and Procurement Canada, entering into a contract containing provisions that limit the proposed contractors liability;
- c. entering into an initial contract that is within the department's contracting limits but where large follow-on contracts and/or amendments are planned;
- d. entering into a contract where unusual circumstances of general public interest exist or where significant issues and risks are involved, even if the contract is within the department's contracting limits;
- e. entering into a contract that involves significant national policies and/or objectives, even if the contract is within the department's contracting limits;
- f. requests for increased contracting authority or exceptional contracting authority; and
- g. derogations from Treasury Board policies.

11.2.9 *Emergency contracting.* Contracting authorities may enter into contracts in response to a pressing emergency situation, as provided for in Part III of the Treasury Board Contracts Directive (see Appendix C). In circumstances deemed as a pressing emergency as defined in Appendix A, contract proposals that would normally require prior Treasury Board approval may be awarded and amended without the approval of the Treasury Board up to a total value (including any amendments) of \$1,000,000. The amending authority offers contracting authorities the possibility of entering immediately into lower dollar value contracts to address the emergency situation and then amending them if

necessary, once the scope of work involved is better defined. If time permits, the authorization of the Treasury Board should always be sought if the proposed contract expenditure exceeds the approved contracting authority level.

As suggested in paragraph 11.2.10, exercise of emergency contract authority should be limited to the most senior delegated official available.

As stated in the Policy requirements, use of the emergency contracting authority is to be explained in a report to the Treasury Board Secretariat within 60 days of the work being authorized or initiated. This report should detail the circumstances, the type and value of the contract awarded, whether it was possible to seek bids, and the delegation level at which the use of the emergency authority was approved. Contracting authorities should institute appropriate internal guidelines to ensure that the emergency authority is not abused.

11.2.10 Delegation of contracting authority. Contracting authorities should establish some differentiation of authority levels within the internal delegation of authority. Higher expenditures, complex situations, or very sensitive contracts should receive approval by a more senior level.

11.2.11 Once the contract proposal is approved by the appropriate authority, the actual contract documents may be executed.

11.2.12 Ratification of contracts. It is recognized that a contracting authority may have inadvertently entered into a contract without previously having obtained the required authority from the Treasury Board as a result of

- an administrative error; or
- a pressing emergency (Article 11.2.9), but where the emergency authority to contract has not been used and reported to the Treasury Board within 60 days.

In either of the preceding circumstances, if a contracting authority enters into a contract without obtaining the authority of the Treasury Board when such authority should have been obtained, a submission seeking ratification by the Treasury Board of the contracting or administrative action is to be made as soon as possible (preferably within 60 days of the work being authorized or initiated by the contracting authority). This submission for ratification of the contracting action should

- indicate that the minister (the Contracting Authority) of the department has been informed of the intended action, and has agreed to the commencement of work prior to seeking Treasury Board's ratification;
- explain the circumstances, the type and value of the contract awarded, and whether it was possible to seek bids; and
- where applicable, outline what corrective measures have been taken to minimize administrative oversights with respect to the awarding of contracts that require Treasury Board approval.

11.3 Government security policy

As stipulated in article 4.2, Related requirements, the government *Security Policy* is to be applied equally to procurement contracts as it is to internal operations. Where contracts or the bid solicitation process require access to Designated or Classified information by the contractor or where such

contracts or bidding process involve the storage and/or processing of designated or classified information on the contractors premises, when it is the user department itself which is the contracting authority, consideration should be given to seeking guidance and/or assistance from common service organizations or contracting through a common service organization that has the resources to ensure compliance with the security policy and standards.

11.4 Contractual arrangements with other governments

11.4.1 Departments and agencies may, pursuant to section 3 of the Contracting Policy, arrange transactions that involve the transfer of goods, services or real property between departments, Crown Corporations, provinces, municipalities and the Territories. Transactions between the federal contracting authorities and provincial or municipal entities are not contracts pursuant to the *Government Contracts Regulations* or the Contracting Policy. These kinds of arrangements are usually covered in joint agreements.

11.4.2 Deleted.

11.4.3 Deleted.

12. Contract administration

12.1 General

12.1.1 Contracting authorities should manage and administer their contracts in a manner that ensures that they are successfully executed in accordance with the agreed terms of time, cost and performance.

12.1.2 *Contract Documentation.* The terms and conditions of any contract issued pursuant to the *Government Contracts Regulations* and this Contracting Policy should be formulated in writing. This includes but is not limited to hard copy documents, facsimile copies or other electronic means.

12.1.3 *Sanctions.* If the contracting policy is ignored or if contracting practices or contract administration are not acceptable, the Treasury Board may direct that sanctions be imposed either on the contracting authority (the institution) or on the officials responsible. Sanctions may include any or all of the following:

- a. revocation of contracting authority or reduction of the dollar levels above which Treasury Board approval must be obtained, either for a specified project or program or for a specific period of time;
- b. establishment of special financial allotments within the funds allocated to the contracting authority which would limit spending to certain purposes or even require specific Treasury Board approval;
- c. instructions to the contracting authority to apply the sanctions in the personnel policies of the Government of Canada against individual employees who have ignored the contracting policy.

Officials responsible for the management of contracts should be made aware of possible institutional or personal sanctions.

12.1.4 *Canadian International Trade Tribunal.* NAFTA, WTO-AGP and AIT require that members to the agreements maintain an independent bid challenge authority. The Canadian International Trade Tribunal

(CITT) has been designated as the bid challenge authority for Canada for all three agreements. A potential supplier may file a complaint concerning a procurement practice to the CITT if the supplier is concerned that any part of the procurement process was unfair or discriminatory under the three trade agreements. In dealing with a complaint, the Tribunal must determine whether the government department or agency responsible for the procurement under review has complied with the requirements of NAFTA, WTO-AGP and AIT and such other procedural requirements, as prescribed in the *Canadian International Trade Tribunal Procurement Inquiry Regulations*. Information on the CITT and its complaint and inquiry process, are contained in the CITT publication *Procurement Review Process – A Descriptive Guide*. The CITT has the statutory authority to award the complainant reasonable costs associated with responding to the solicitation and filing the complaint. In addition, the CITT is authorized to:

- a. recommend a delay in the awarding of a contract during the resolution of the bid protest;
- b. issue a recommendation to resolve the bid protest, which may include directing the contracting authority to re-evaluate offers, terminate the contract or renew the competition process;
- c. recommend the award of compensation for lost profit; or
- d. make written recommendations to the contracting authority concerning practices that the CITT considers to be inconsistent with the agreements.

12.2 Financial considerations

12.2.1 *The Financial Administration Act*. Sections 32, 33 and 34 of the *Financial Administration Act* prescribes various financial controls in contract expenditures. Usually the financial aspects of contract administration are the responsibility of financial managers, but contract administrators should have a basic knowledge of the law and the financial management policies of the government. Much of this information is set out in the *Comptrollership* volume of the *Treasury Board Manual* issued by the Treasury Board Secretariat.

12.2.2 *Advance Payments*. Section 8 of the *Government Contracts Regulations* permits advance payments. If advance payment clauses are to be included in contracts, they must adhere to the principles of parliamentary control, the requirements of the *Financial Administration Act*(paragraph 33(3) (a)), and the provisions of the appropriation Acts themselves. Where contract approval is within departmental authority, advance payments can be approved by the department. However, as required by the Regulations, where contract approval is beyond departmental authority, advance payments require Treasury Board approval.

12.2.3 *Preconditions For Using Advance Payments*. Advance payments should be considered only in extraordinary circumstances, that is, when they are considered essential to program objectives. Contractors are expected to finance their work from their reserves or through commercial financing based on the anticipated payments from the contracting authority for full or partial completion of the work. Contracting authorities should consider the financing and interest costs to the Crown, as well as the method of recovery, when negotiating advance payments and should evaluate these costs when comparing other alternatives.

12.2.4 Further to the preceding, contracting authorities should consider including advance or progress payments in a contract *only* if:

- a. adequate security for the payment is ensured;

- b. the Crown receives value commensurate with the amount of the payment;
- c. the contracting authority has adequate funds to provide the financing; and
- d. one or more of the following criteria are met; economic advantage to the Crown;
 - i. contractor could suffer hardship or provide financing only with difficulty or at rates considered to be uneconomic in relation to prevailing chartered bank prime lending rates;
 - ii. the value of the contract is considered to be beyond the assessed financial capabilities of the contractor;
 - iii. long duration for the contract performance;
 - iv. an entrenched tradition or practice or receiving advance or progress payments for the purchaser exists in a particular industry or segment of industry. (*Supply Policy Manual Article 4202*)

Advance payments are not necessarily warranted even if the preceding preconditions are met. While *progress payments* may be more common, *advance payments* are normally very much the exception.

12.2.5 Timing and Amount of Advance Payments. Except in extraordinary circumstances, in accordance with the principles of annual appropriations and the basis on which funds are appropriated by Parliament,

- a. advance payments cannot be made in one fiscal year in respect of a contract that does not start until the next fiscal year;
- b. where an advance payment is in respect of extraordinary start-up costs, the payment is to relate to, and cannot exceed, the actual start-up costs expected to be incurred by the contractor in the fiscal year in which the payment is made;
- c. multi-year maintenance contracts are to, as a minimum, provide for annual payments for each year of the contract, and multi-year licensing agreements should, to the extent possible, do the same;
- d. departments cannot carry funds over from one fiscal year to the next by transferring them to revolving funds or specified purpose accounts, or by pre-paying for goods and services from revolving funds; and
- e. advance payments in any given fiscal year must relate to, and should not exceed, the value of the work to be performed or the goods or services reasonably expected to be provided during that year.

12.2.6 Payments. As required by article 4.2, Related requirements, work performed or goods received under a contract are to be paid for in accordance with the government's payment on due date policy on the payment of accounts (see the Comptrollership policies) as follows:

- a. the standard payment period is 30 days;
- b. departments and agencies are to ensure that their systems and procedures are designed to attain this standard;
- c. the payment period is measured from the date that the goods or services were received in acceptable condition at the location(s) specified in the contract or the date that an invoice in proper form was received, whichever is later;
- d. interest shall be paid on payments made later than the due date where expressly authorized by contract or statute. For that reason, clauses authorizing the payment of interest are included in government contracts.

Payments are scheduled so that they are made as close as possible to, but no later than, the due date. Except where statutes, contracts or fee schedules approved by federal regulatory agencies provide otherwise:

- interest is paid automatically on accounts that are not paid on the due date, 30 days from receipt of an invoice or 30 days from acceptance of goods or service, whichever is later, if the government is responsible for the delay (i.e., accounts outstanding for 50 days or more when the standard payment period of 30 days applies);
- the period for which interest is paid automatically is measured from the due date to the date that the payment is issued.

12.2.7 The terms of the contract, where applicable, should state the dates when interim and progress payments are due. Progress payments should normally be made within the due date except where other terms are agreed to in the contract.

12.2.8 Interest is computed by multiplying the amount due by the applicable rate (see article 12.2.9 below) and the time period expressed as a fraction of a year in days, i.e., the number of days in the period for which interest is payable over a denominator of 365.

12.2.9 The rate of interest payable is the average daily Bank of Canada rate for the month preceding the current month plus 3%.

12.2.10 *Exceptions.* When it is more advantageous to the government, because of factors such as discounts, to pay accounts earlier, or when the terms and conditions for payment and interest under a contract are different from the 30-day standard, the standard payment period may be set aside.

12.2.11 Interest is not paid on an interim basis, on interest charges, or on advance payments that are late.

12.2.12 When goods or services are not considered to be in accordance with the contract, certification under Section 34 of the *Financial Administration Act* cannot be given. As required by the payment on due date policy, departments must notify suppliers within 15 days if the contract performance is disputed. The 30 day payment period begins upon receipt of the replacement goods or services or the revised invoice or additional information.

12.3 Contract documentation

12.3.1 Procurement files shall be established and structured to facilitate management oversight with a complete audit trail that contains contracting details related to relevant communications and decisions including the identification of involved officials and contracting approval authorities.

12.3.2 Under the *North American Free Trade Organization*, the *World Trade Organization – Agreement on Government Procurement*, and the *Agreement on Internal Trade*, Contracting authorities shall guarantee that complete documentation and records, including a signed and dated record of all communications with suppliers, are maintained to allow verification by the Canadian International Trade Tribunal that the procurement process was carried out in accordance with the agreements.

12.4 Contract documentation content

12.4.1 All contract documents should contain conditions and clauses that reflect the requirements of the work to be produced or supplied under the contract. In addition, certain clauses are applicable for all contracts. As stated in article 4.2, Related requirements, other necessary clauses will include: a provision for paying interest when the Crown causes a delay in paying the contractor; a clause to permit the Crown to pay the Goods and Services Tax or the Harmonized Sales Tax; a clause covering possible conflict of interest situations; and, if relevant, a clause addressing intellectual property issues, including the ownership of intellectual property. An appropriate termination clause is especially important so that the contracting authority may end the contract if, for example, there is a change in the government's priorities or a cutback in funding. The Department of Justice representative in each department or agency should be consulted about contract terms.

12.4.2 As stated in article 4.2, the Standard Government Construction Contract has been prescribed for all construction contracts that exceed \$100,000. The basic policy governing the principles and expression of the Standard Government Construction Contract is the prerogative of the Treasury Board. However, the style and content are the responsibility of the Public Works and Government Services Canada.

12.4.3 When the Crown or the contracting authority is referred to in a contract, the proper designation is "*Her Majesty the Queen in right of Canada, referred to in the contract as "Her Majesty," represented by the Minister of (the legal name of the contracting authority) referred to in the contract as the "Minister"*". The applied titles of departments or agencies should not be used. Legal and applied titles for departments and agencies are set out in "Titles of Organizations", Federal Identity Program, issued by Treasury Board.

12.5 Criminal Code, the Financial Administration Act and the Trade Agreements

12.5.1 The *Criminal Code of Canada*, Section 748, Sub-Section 3 prohibits anyone who has been convicted of an offence under:

- Section 121, Frauds upon the Government;
- Section 124, Selling or Purchasing Office; or
- Section 418, Selling Defective Stores to Her Majesty,

from holding public office, contracting with the government or receiving a benefit from a government contract, unless the Governor in Council has restored (in whole or in part) these capabilities to the individual or the individual has received a pardon.

12.5.2 As stated in article 4.2, Related requirements, contracts are subject to the screening requirements of the *Security Policy* of the Government of Canada. The contracting authority is responsible for ensuring compliance. Contract administrators, therefore, must ensure that any necessary security clearances and/or reliability checks are carried out so that contractors and their employees, where applicable, are acceptable under the policy (see the *Security Policy* of the Government of Canada issued by Treasury Board).

12.5.3 As required by the Prime Minister's *Conflict of Interest and Post Employment Code for Public Office Holders*, September 1985, contracting authorities are to ensure that all requirements are met.

These include inserting clauses, approved by Treasury Board, into every contract entered into by the Crown. They are contained in Appendix G.

12.5.4 Section 80 of the *Financial Administration Act* makes it an indictable offence if any regulations under the Act, including the *Government Contracts Regulations*, are violated. This section also applies to officers or employees who know of violations and neglect to report them. Section 81 makes the offering of bribes to influence the decisions of officials an indictable offence.

12.5.5 As required by the [North American Free Trade Agreement](#), the [World Trade Organization – Agreement on Government Procurement](#), and the *Agreement on Internal Trade*, contracting authorities must ensure that all requirements are met. Failure to comply with the agreements can result in a challenge under the Canadian International Trade Tribunal.

12.6 Contract performance

12.6.1 The management and administration of contracts involves many activities to ensure the fulfillment of a contract. This also covers those activities or events that can alter or disrupt the performance of a contract e.g., default of a contractor, disputes and contract amendments. This policy applies equally well to those other activities associated with the management and administration of contracts.

12.6.2 Whenever the satisfactory fulfillment of a contract is jeopardized, contracting authorities should take the necessary steps to serve and protect the interests of the Crown in meeting the terms of the contract, and then to protect (where appropriate) the interests of other parties involved in the contract. Contract disputes should be dealt with fairly and as promptly as possible. Contract amendments should be made with the same care that went into the original contract.

12.7 Non-performance of contractor

12.7.1 In every case of the impending or actual bankruptcy of a contractor, the contracting authority should contact the departmental legal adviser and ensure that any proposed action will not prejudice the Crown's legal position. When the bankrupt contractor is a company resident outside Canada, action should be taken in accordance with the bankruptcy law of the country concerned. Legal advice should be obtained locally, if necessary.

12.7.2 As stated in article 4.2, Related requirements, where a contractor has provided contract financial security in the form of a bill of exchange, a government-guaranteed bond, or a letter of credit, the contracting authority is to redeem these securities to satisfy the requirements of the contract. Any excess amounts are returned to the contractor after all federal claims have been satisfied.

12.7.3 When a defaulting contractor has provided financial security in the form of a surety performance bond or a surety payment bond, the bonding company becomes liable, up to the amount of and in accordance with the terms and conditions of the bond. In the case of a performance bond, the bonding company's liability is only to the Crown; under a payment bond, claims may be made on the bonding company by all those who have a direct contract with the principal contractor or a sub-contractor for the supply of labour, material or services.

12.7.4 *Claims by Sub-subcontractors*. During the course of a construction contract or when it is completed, a second-tier claimant, either a sub-subcontractor or a third level supplier, may make a claim

against the prime contractor. When one or more such claims are made against the prime contractor, the posting of a claimant's payment bond by the prime contractor will permit regular payments under the contract while the disputes are being settled between the various parties.

12.7.5 When the contract of a defaulting contractor is secured by surety bonds, the bonding company:

- a. when acting under the performance bond, should be paid all amounts to which the contractor would be entitled under the terms of the contract; and
- b. when acting under a payment bond, should not be reimbursed for the payment of creditors from any funds held by the contracting authority until the work is substantially complete and the surety has fully discharged its obligations under the bond.

12.7.6 In case of bankruptcy, the claims of the Trustee in Bankruptcy for any amounts due and payable by the contracting authority to the contractor at the date of its bankruptcy are subject to the above conditions.

12.7.7 As required in article 4.2.1 recognition is to be given to miscellaneous, indirect contractual obligations of a contractor and its sub-contractors (including suppliers) that arise from assessments by agencies of the government (e.g., Employment Insurance, Canada Pension Plan contributions, wages due the employees or by agencies of other governments in cases where a precedent of mutual cooperation has been established (e.g., workers' compensation acts)).

12.7.8 Authorities concerned should follow closely any bankruptcy proceedings involving contractors with whom they are involved, promptly submit any claims to the trustee and ensure these are acknowledged.

12.7.9 If the contractor must be removed from the job on account of bankruptcy or other default, action should be taken under the appropriate terms of the contract. If the contract is secured by surety bonds, the contract itself should not be terminated because this would also terminate the existing contractual relationship with the bonding company.

12.7.10 As stated in article 4.2, contracting authorities are reminded of their duty to pursue the rights of the Crown as a creditor under the *Bankruptcy Act*:

- a. the right of secured creditors to realize on their security (sub-section 69(2));
- b. the right to prove title to property in the possession of the bankrupt (section 81);
- c. the right of creditors to offset money payable by them to the bankrupt against debts owing to them by the bankrupt;
- d. payment of debts due the Crown in priority to payment of unsecured creditors of the bankrupt (section 136).

12.7.11 Contracting authorities should obtain a fair reduction in the contract price for less-than-specified performance.

12.8 Disputes

12.8.1 The key factor when disputes arise is the expeditious handling of the disagreement. This is particularly important because prolonged disputes can delay performance as defined in the contract and payment to the contractor. As such, the Minister of Justice has committed to working with client departments to introduce Dispute Resolution (DR) clauses into the various contracts to which the

Government is a party. To this end, the *Directive Concerning the Use of Dispute Resolution Clauses in Contracts* (the Directive) has been issued by the Department of Justice. The Directive states that, in advising client departments and in preparing contracts for client departments, Justice legal practitioners must make every effort to insert dispute resolution clauses into contracts, where appropriate. Dispute resolution clauses may range from provisions for resolution of disputes as they arise, by way of structured negotiations, to other alternatives such as mediation and arbitration. Any inquiries regarding the Directive Concerning Dispute Resolution policy or the appropriate clauses should be made to your departmental legal services unit of the Department of Justice.

12.8.2 In a contract dispute, the decisions of the contracting authority made after the contract has been awarded, are challengeable in court. Under *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, the *Agreement on Internal Trade*, the bidding process can be challenged at the Canadian International Trade Tribunal. It is important, therefore, that legal advisers be consulted and that the actions of a contracting authority and its decisions on a contractor's claim be defensible in court.

12.8.3 *Negotiations*. Efforts should be made to resolve disputes as they arise, first by negotiating with the contractor. This can be through discussion between representatives of the contractor and the contracting authority or by a more formal review established by the department or agency. Contracting authorities should develop systems that ensure:

- a. prompt attention is given to disputes;
- b. unresolved disputes are brought forward quickly to a designated senior level in the department or agency for decision; and
- c. the decision is quickly communicated to the contractor so that the contractor may take further action if so desired.

12.8.4 *Mediation*. When a dispute has not been resolved by negotiation, mediation by a third party may be used when it is acceptable to both sides. Mediation should conform to the following principles:

- a. it should be voluntary on the part of the contracting department or agency and the contractor with respect to entry into mediation, selection of mediator, and acceptance of the mediator's recommendations;
- b. the powers of a mediator should be limited to persuasion and cannot include adjudication. (There should not, however, be any restriction on the mediator in terms of making contacts and collecting information relevant to the dispute);
- c. the costs of mediation should be shared equally by both parties.

12.8.5 *Arbitration*. Arbitration that is binding on both parties is an alternative to litigation, provided that both the contractor and the contracting authority agree to it. The agreement to allow for its use may be inserted in a contract at the outset, or it may be negotiated between the parties at the time a dispute arises. If allowance is to be made for, or there is the prospect of arbitration, the contracting authorities should first discuss the details of it with their legal advisor. This advisor has guidelines from the Senior Assistant Deputy Minister, Legal Services, Commercial and Property Law, Department of Justice, covering the format (including procedures) and contents of an arbitration agreement and of any arbitration clause to be included in a contract.

12.8.6 Contracting authorities, with the advice of their legal advisor, may refer all questions of fact and certain questions of law to arbitration without the formal concurrence of the Department of Justice.

Treasury Board approval is not required to use arbitration. Some of the questions of law which can now be the subject of arbitration include:

- a. the formation, validity, interpretation, application or enforceability of the contract;
- b. the performance, breach, termination or other discharge of the contract;
- c. the rights, duties, obligations or remedies of the parties created by or pursuant to the contract;
- d. any other issue of private law that may arise between the parties relative to the performance of the contract; or
- e. the interpretation and application of statutes that relate primarily or solely to commercial transactions including, for example, the *Commercial Arbitration Act* and the *International Sale of Goods Contracts Convention Act*.

12.8.7 Deleted.

12.8.8 Deleted.

12.8.9 *Legal Process*. When dispute resolution is pursued through arbitration, the parties appear before an Arbitration Tribunal, which takes the place of a court and makes an "award." While an arbitration tribunal has no authority to enforce its award, the *Commercial Arbitration Code* (Chapter VIII, Article 35) provides that such an award will be recognized as binding, and upon application in writing to a competent Canadian court will be enforced by a judgment of that court. Because the *Crown Liability and Proceedings Act* (Sections 29 and 30) prevents such a judgment from being executed against the Crown, in these cases the court also issues a Certificate of Judgment against the Crown, which obligates the Minister of Finance to authorize the payment out of the Consolidated Revenue Fund of any money awarded by the judgment.

12.8.10 *Costs and Disbursements*. In preparing for arbitration, any expenses incurred by the contracting authority are a charge to a departmental appropriation, whether the eventual decision is rendered for or against the contracting authority.

12.8.11 When the Minister of Finance receives a Certificate of Judgment against the Crown and authorizes the payment out of the Consolidated Revenue Fund of any money awarded by a court judgment, this payment will incorporate any costs determined and levied by the arbitration tribunal and included in its award. In this context, contracting authorities should note that the cost associated with the actual conduct of arbitration is normally shared equally by the contracting authority and the contractor. Contracting authorities should also understand that the money paid on their behalf from the Consolidated Revenue Fund will eventually be accounted for, either by transferring funds from a departmental appropriation or by seeking supplementary funding. Any payment of an award to a contractor by the contracting authority as a result of an arbitration decision is to be reported annually in the Public Accounts; this will ensure both visibility and accountability.

12.8.12 Where a contracting authority terminates arbitration proceedings and agrees to pay a contractor without the necessity of an arbitral award, the money for such a payment will have to be taken from a departmental appropriation. In some instances, particularly where the interpretation of a contract is involved, this is accomplished by simply amending the amount allotted for the contract. It is the responsibility of the contracting authority to ensure that any such payment is within its amending authority for contracts as set out in Schedules 1 through 4 of Appendix C, otherwise the contracting authority is required to obtain Treasury Board approval for any such payments in excess of this amending authority.

12.8.13 *Revenues*. The contracting authority should collect or enforce payment of an award to the Crown consequent to the arbitration decision in accordance with the "Comptrollership" volume of the *Treasury Board Manual*. The money collected, including any insurance proceeds, should be deposited to the credit of the particular project, a departmental appropriation or the Consolidated Revenue Fund, as appropriate. The Standard Federal Government Construction Contract form describes how to deal with insurance proceeds arising from construction contracts.

12.8.14 *Litigation*. An alternative to arbitration is, of course, litigation. By convention, matters referred to arbitration are not then subject to litigation unless the arbitration was defective in form or content. Where the contractor or contracting authority decides that litigation should take place, the Department of Justice assumes responsibility for subsequent action in accordance with the *Department of Justice Act*.

12.9 Contract amendments

12.9.1 Even though the Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost.

12.9.2 Every effort should be made to avoid:

- a. inadequate initial funding, resulting in amendments to increase the contract value;
- b. inadequate pre-planning, resulting in amendments to change the design, specifications or quantity involved; and
- c. improper administrative procedures, necessitating amendments to change the specifications and delivery or other requirement in order to protect the contractor or government agency involved.

12.9.3 Many contract amendments are, in fact, prudent. Often contract amendments or probable amendments can be foreseen when the initial contract is contemplated. In such cases, the proposal section of the approval document should indicate the likelihood of such amendments, including a maximum cost limit. Where Treasury Board or managerial approval is required and the original contract proposal to the Treasury Board or departmental management has been approved, subsequent amendments do not require the same level of approval as long as they are within the original intent of the proposal and applicable amendment authorities.

12.9.4 *Extra costs*. Departments and agencies are advised to include clauses for cost overruns in contracts. In situations where, the Crown has received no additional or apparent benefit and there is uncertainty whether a legal liability exists under the terms of the contract. Legal advice should be obtained as to whether the extra costs may be considered as an amendment to the contract. Additional payments should, in any event, cover only the additional reasonable costs incurred by the contractor and should be considered only if the circumstances were beyond the contractor's control and the contractor was without fault or negligence and could not reasonably have foreseen the actual circumstances at the time the contract was entered into. Each case will be treated on its own merits with

payments allowed within delegated authorities and appropriate approvals sought in the event that the changes exceed authorities.

12.10 Contractual arrangements involving Crown corporations

12.10.1 Subsection 41(2) of the *Financial Administration Act* states that the *Government Contracts Regulations* do not apply to federal or provincial Crown corporations unless the legislation of the Crown corporation specifically requires that it be subject to Subsection 41(1) of the Act. Consequently, the Treasury Board Contracts Directive and relevant policies do not apply to Crown corporations. Arrangements between departments and Crown corporations cannot be contracts in a strictly legal sense (the Crown cannot contract with itself).

12.10.2 Reserved.

12.10.3 *Agency status*. When a department or agency has been designated as an "agent" of a Crown corporation, the contracting procedures and authority limits of the contracting authority continue to apply. As stated in article 4.2, Related requirements, the contracting authority cannot assume the powers of a Crown Corporation even when undertaking work on its behalf. In practice, the department or the Crown corporation will seek Treasury Board authority when a proposed contract exceeds the limits prescribed in the Contracts Directive.

12.10.4 *Contractual arrangements with other governments*. There are situations where contracting authorities obtain goods and services from other government entities such as provinces, municipalities and provincial Crown corporations. There are also times when the federal government co-operates with a provincial or municipal body to carry out a project. Usually, these arrangements are embodied in federal-provincial agreements, normally governed by legislation or related to the overall mandate of the federal authority. When this formal federal-provincial relationship is not applicable, a contractual relationship between the federal contracting authority and the other government entity may be appropriate. As called for by article 4.2, all contracting policies, including the dollar limits for contracting (Appendix C), apply to the federal organization.

12.11 Protecting the interests of the Crown

12.11.1 *General*. Part II of the *Government Contracts Regulations* deals with securing the due performance of contracts. The contracting authority is to determine the need for and amount of financial security, subject to the Regulations, policies and Related requirements.

12.11.2 The following is the policy on financial security and the use of insurance in contracting. For more details, see Appendix R which contains the *Policy on the Use of Standby Letters of Credit as an Alternative to Bid or Contract Security for Federal Government Contracts*.

12.11.3 *Financial security*. The various forms of financial security exist to ensure that the contractor's obligations under the contract are carried out, to protect the interests of subcontractors, sub-subcontractors and suppliers, and to protect the Crown against loss should a low bidder fail to enter into a contract. The principal traditional techniques are holdbacks, security deposits and surety bonds. When security is obtained, contracting authorities will apply the procedures for the handling of bonds and security deposits set out in the *Government Contracts Regulations*.

12.11.4 *Form and amount of security*. The bidder or contractor has the option to submit a security deposit in the form he or she wishes to provide, however, the following criteria can be used as a guide to determine the form and amount of security:

- a. the type of work and the custom of the trade or profession;
- b. the consequences of the failure or inability of the contractor to fulfill contractual obligations;
- c. before solicitation of bids, the stability of firms likely to compete for the contract. As a general rule, the more elaborate the prequalification of prospective contractors, the less the need for security in the contract;
- d. after solicitation of bids, the capability of the specific contractor, including (as deemed applicable and available) the financial structure, performance record, payment record, credit rating and availability of cash in relation to commitments.

As specified in the definitions in the *Government Contracts Regulations*, a security deposit may be a bill of exchange payable to the Receiver General and certified by an approved financial institution on itself, a government guaranteed bond which is convertible to cash, or any other form of security acceptable to the contracting authority and approved by the Treasury Board. The only other forms of security that have been approved for general use are bid and contract surety bonds and claimant's payment bonds issued by acceptable bonding companies and irrevocable standby letters of credit which have been issued by a financial institution which is a member of the Canadian Payments Association.

Contracting Authorities should not specify in the request for proposals or tender call the type of security to be submitted.

12.11.5 *Holdbacks*. Holdbacks serve two purposes:

- a. to provide an incentive for the contractor to complete the work according to the stipulated specifications; and
- b. to provide the Crown with access to funds for commitments resulting from a contractor's non-performance.

Negotiated holdbacks should be large enough and last long enough to ensure that all contractual requirements can be met. This can be determined by assessing the firm's financial capability, performance record, payment record, markets or industry volatility and the degree of risk inherent in the work.

12.11.6 *Security deposits*. The contracting authority determines the amount of the deposit required and ensures that the actual deposit is acceptable under the *Government Contracts Regulations* (see Part II of the Regulations, sections 10 to 17, concerning the procedures governing these instruments. See also the Comptrollership policies. When cash, certified cheques, other bills of exchange, letters of credit, or government-guaranteed bonds are submitted as contract security, the contracting authority usually specifies a minimum of 10% of the value of the contract. Surety bonds are usually required to have a total value of 100% of the value of the contract. In construction contracts, the amount of security provided by surety bonds is usually 50% of the total value of the contract in a performance bond, 50% of the total value of the contract in a labour and material payment bond, and the total value of the claims in a claimant's payment bond. When government guaranteed bonds are resubmitted as security, their value should be current value, not necessarily face value.

12.11.7 *Surety bonds.* If surety bonds are proposed by the bidder or contractor and are acceptable to the contracting authority, the appropriate model bond form should be used for consistency and uniformity. Model forms for bid bonds, performance bonds and payment bonds have been approved by Treasury Board for use in construction contracting and are shown in Appendix S. A list of insurance companies whose bonds (regardless of purpose) are accepted by the government is contained in Appendix L, which is revised as required.

12.11.8 *Bid security.* The amount required as bid security is also determined by the contracting authority as guided by the traditions or customs generally followed in the type of contracting being undertaken. For construction contracts the following bid and contract security is usually requested by the contracting authority:

- a. For bid security when the amount exceeds \$30,000
 - o if the security is a bill of exchange or a government guaranteed bond, 10 percent of the amount bid up to a bid total of \$250,000. If the bid exceeds \$250,000, the foregoing amounts are requested plus 5 per cent of the amount in excess of \$250,000.
- b. if the security is a surety bond, 10 per cent of the amount bid.

12.11.9 Normally, neither a bid bond nor a security deposit protects against the withdrawal of an offer before its acceptance, unless the offer is made under seal. The model bid bond form contains a provision obligating the bonding company to compensate the Crown for higher costs in case of withdrawal, but does not provide a basis for legally enforcing entry into the contract. Where use of the model form is not appropriate or where contracting authorities judge it to be in the public interest to require the additional protection of offers made under seal, assistance of legal officers should be sought in preparing bidding documents. (The seal concept does not apply in Quebec, but the bidder who undertakes to keep an offer open for a specified period of time cannot withdraw the offer without becoming exposed to a damage claim.) If a security deposit is made, withdrawal of an unsealed tender before acceptance entitles the tenderer to the return of the deposit.

12.11.10 *Provision for damages or penalty payments.* A clause referring to provisions for damages or penalties, where applicable, should be included in contracts. Legal advice should be sought concerning the types of damages or penalties which could be included and wording of the clause.

12.12 Insurance

12.12.1 Contractors are responsible for ensuring that they manage and have relevant financial protection against the risks to which they are exposed, especially those over which they have control. Consequently, the general policy of the government is not to indemnify contractors against such risks. Normally, therefore, a general condition of every contract is that the contractors indemnify and save the Crown harmless from all manner of claims and damages. As commercial insurance is one option available to and frequently used by responsible contractors for this purpose, it should always be understood that, in the first instance, insurance is for the protection of contractors in support of their potential liability to indemnify the Crown and others, and only ultimately for the protection of the Crown.

12.12.2 Because the cost of insurance is normally included in prices and failure to carry adequate insurance could jeopardize performance, contracting authorities should satisfy themselves that contractors make prudent use of insurance. Contractors should not procure insurance on risks that are

the responsibility of the government unless the respective responsibilities are so commingled that they are indistinguishable. However, when the Crown has acknowledged, or elected to assume the risk on a predetermined or case-by-case basis, especially when the risks are under the control of the government, e.g., contractors' property in the care, custody and control of the Crown, such risks may be self-underwritten by the government.

12.12.3 Contracting authorities should obtain an opinion on liability from their legal advisers and refer to the appropriate Treasury Board directives on risk management when contracts or amendments are contemplated.

13. Construction contracts

13.1 General

13.1.1 This section sets out Treasury Board policy for construction contracts.

13.1.2 *Bidding*. Section 7 of the *Government Contracts Regulations* does not specify how bids for construction contracts should be obtained. However, departments should give public notice for construction contract bids over \$60,000.

13.1.3 Deleted.

13.2 Administration of construction contracts

13.2.1 The standard federal construction contract form should be used for all construction contracts over \$100,000 except those which, in the judgment of the contracting authority, must be modified to meet special circumstances. The principles and policies expressed in the Standard Construction contract are the prerogative of the Treasury Board. However, the style and content of the Standard Construction contract are the responsibility of the Department of Public Works and Government Services Canada.

13.3 Construction claims mediation

13.3.1 This part sets out mediation guidelines.

13.3.2 The mediator's role is to make recommendations on the degree of liability and the amount of any damages. Since the Crown's liability, if any, under the contract is a legal question, departments should consult their legal services before deciding to go to mediation.

13.3.3 A single mediator, rather than a panel, should be appointed wherever possible because it generally results in a more expeditious and economical mediation service. The mediator should be acceptable to both the contracting department and the contractor. Mediators who have knowledge of construction practices and contracts, as well as experience in claims analysis, should be considered.

13.3.4 The "Mediation Agreement" should give the mediator authority to form opinions, make findings, and prepare recommendations about the matter(s) in dispute. The process should not be subject to judicial procedures such as rules of evidence, and the mediator should be allowed reasonable access to information and to employees of both the Crown and the contractor.

13.3.5 The "Mediation Agreement" should make provision for the mediator to:

- a. base any opinions, findings, conclusions and recommendations the terms and provisions of the contract;
- b. provide any reasonable calculations to support the opinions, findings, conclusions and recommendations;
- c. within the time-limit established under the agreement, submit to both parties, a written report containing final recommendations and conclusions.

13.3.6 The mediator may hold hearings at times and places acceptable to the parties and the mediator. If the parties cannot agree, the mediator may, in the interest of due diligence, set any necessary times and locations.

13.3.7 The parties should not be represented by legal counsel at any hearings held by a mediator. If either party wishes to be represented by legal counsel, litigation or arbitration should then be considered.

13.3.8 If either party retains independent experts, the mediator may hear these experts in the presence of the parties and should allow a rebuttal.

13.3.9 Submissions should be made to the mediator in accordance with the following provisions:

- a. each party, at its own expense, may call any witnesses and produce any documents that it considers necessary to substantiate its submissions;
- b. copies of such documents should be submitted to the mediator within the time limits established under the mediation agreement.

13.3.10 The mediator's fees are to be agreed upon before appointment. Any agreement should provide for reimbursement of travel expenses in accordance with the [*National Joint Council Travel Directive*](#), and of other reasonable costs incurred during mediation. Provision may also be made for the mediator to obtain expert assistance with the approval of the parties to the contract.

13.3.11 If a party elects to obtain independent expert assistance, that party bears the full costs.

13.3.12 All fees and costs incurred by the mediator are to be shared equally by the parties.

14. Goods contracts

14.1 General

14.1.1 This section sets out the Treasury Board policy for goods contracts.

14.1.2 *Bidding*. Section 7 of the *Government Contracts Regulations* permits the contracting authority to determine the appropriate bidding methodology. This may include giving public notice, for example, by means of electronic bidding methodology or solicitation of bids from suppliers on a list representative of the suppliers of the required goods. All requirements for goods that are subject to the provisions of the *North American Free Trade Agreement* and the *World Trade Organization – Agreement on Government Procurement* must be advertised using electronic bidding. All requirements for goods that are subject to the provisions of the *Agreement on Internal Trade* must be published on the electronic bidding system.

14.1.3 *Authority to enter into goods contracts.* The *Department of Public Works and Government Services Act*, Statutes of Canada, 1996, Chapter 16, Section 6, gives the Minister of Public Works and Government Services exclusive authority to acquire materiel or goods.

14.2 Delegation

14.2.1 According to Section 8 of the *Department of Public Works and Government Services Act*, the Minister of Public Works and Government Services may delegate "... any of the Minister's powers, duties or functions under this Act to an appropriate minister for any period and under any terms and conditions that the Minister considers suitable."

14.2.2 Deleted.

14.2.3 Deleted.

14.2.4 The dollar limits in the Treasury Board Contracts Directive, as well as all policies and guidelines concerning the acquisition of materiel, apply only after a contracting authority has received appropriate procurement authority from the Minister of Public Works and Government Services.

14.2.5 The management of materiel is the responsibility of user departments. Policies governing materiel management, including EDP materiel, are contained in the appropriate Treasury Board policies.

15. Leases

15.1 General

15.1.1 With the coming into force of the *Federal Real Property Act and Regulations* and the consequent related amendment to the *Government Contracts Regulations*, both leases as well as contracts for the fit-up of an office or residential accommodation, where such contracts are part of a transaction done under the *Federal Real Property Act* or its *Regulations*, are excluded from the ambit of the *Government Contracts Regulations* and the government's *Contracting Policy*.

15.1.2 All enquiries and questions concerning real property management, including leases and other matters covered by the *Federal Real Property Act* and its *Regulations*, may be directed to the Real Property Management Division, Comptrollership Branch, Treasury Board Secretariat.

16. Service contracts

16.1 General

16.1.1 This section sets out the Treasury Board policy for service contracts.

16.1.2 *Statement of work.* The statement of work or requirements description should clearly describe the work to be carried out, the objectives to be attained and the time frame. It should be:

- a. explicit about the client's requirements and the contractor's responsibilities so that questions of interpretation can be avoided; and

- b. detailed enough to ensure that the client department receives the services or advice that it requires but, at the same time, flexible enough to permit innovation and initiative by the contractor in the interests of the client department.

16.1.3 The statement of work should identify the specific stages of the work, their sequence, their relationship to the overall work in general and to each other in particular. The type, magnitude and complexity of the work will determine the degree of detail required.

The following elements may be included as applicable:

- a background statement outlining the situation leading to the requirement;
- a clear statement describing the objective of the task and the work to be achieved;
- an accurate description of the scope of the work, including its range, extent and bounds;
- details of any constraints imposed, such as government or other policies and standards, current and proposed related activities, security, sensitivity to other interests, employment equity, protection of the environment, conservation of resources and other relevant restrictions;
- availability of relevant existing studies or other resource material;
- the manner in which the output of the contract, such as work documents, progress reports, etc., should be presented or submitted;
- a time schedule for the completion of each stage of the work and for the entire work;
- when the work is being carried out on behalf of another department or agency, details of available client support and responsibilities;
- progress report requirements and other control procedures required by a client agency during the work;
- requirements relating to performance of the several stages and the work as a whole.

16.1.4 *Bidding*. Section 5 of the *Government Contracts Regulations* requires that bids be solicited before contracts are awarded. This solicitation may include giving public notice, for example by means of the electronic bidding methodology, public notice in advertisements in trade publications and newspapers, or solicitation of bids from suppliers on a list that is representative of the suppliers of the required services. Section 6 of the Regulations describes when the bidding requirement may be set aside. Subparagraph 6(b)(ii), (iii) and (iv) apply to service contracts. Although provision is made for non-competitive procurement of services, an exception to the general government policy and practice of competitive solicitation should not be necessary in these situations. Contracting authorities may use an Advance Contract Award Notice (ACAN) to satisfy the requirement for competition, which will then allow the use of the higher competitive contracting authority levels if there are no valid challenges to the notice.

16.1.5 Contracting for services has traditionally been accepted as an effective way to meet unexpected fluctuations in workload, to acquire special expertise not available in the Public Service, or to fill in for public servants during temporary absences in certain circumstances. At the same time, excessive or improper contracting for services can result in circumvention of government legislation, regulations and policies covering such matters as the merit principle and bilingualism. As stipulated in article 4.2, Related requirements, contracting authorities are to avoid any contracting situation that would be contrary to or conflict with the *Public Service Employment Act* and common law principles dealing with master-servant relationships.

16.1.6 Deleted.

16.1.7 *Categories of service contracts*. Distinction has heretofore been made between "consulting" and "non-consulting" service contracts. This differentiation has lost its effectiveness and has been changed so that there is only one category, "service contract." The contracting authority levels have subsequently been adjusted and the generally higher levels for the former non-consulting service contracts now apply to all service contracts (refer to Appendix C for greater detail).

16.2 Contracting for the services of individuals and Public Service employment

16.2.1 The goal of this policy is to explain the difference between contracting for the services of individuals and Public Service employment. It outlines how to avoid entering into contracts of services with the Crown which create an employer-employee relationship, and how to avoid conflicting with staffing legislation. A contract of service results in the establishment of employee-related benefits, which include, for example, health and dental care, long-term disability coverage, government pensions, Employment Insurance, Canada Pension Plan and income tax source deductions. Factors that may create an employer-employee relationship include the degree of supervision; provision of working space and equipment; type of work (i.e. is the contractor doing the same work as employees); and basis of payment and benefits.

16.2.2 The Public Service consists of the positions in departments and other government entities that are listed in Schedule I of the *Public Service Staff Relations Act*. Part I of the Schedule, which lists those positions for which the Treasury Board is employer, represents the vast majority of Public Service employees. Part II of the Schedule lists "separate employers," that is, entities that establish their own terms and conditions of employment.

16.2.3 Employment in the Public Service is generally determined according to a statutory regime. In particular, employment in that part of the Public Service for which the Treasury Board is employer is governed by three statutes:

- the *Public Service Employment Act*, which gives the Public Service Commission, with exceptions, the exclusive authority to appoint persons to positions in the Public Service;
- the *Financial Administration Act*, which gives the Treasury Board the power of personnel management in the Public Service; and
- the *Public Service Staff Relations Act*, which governs collective bargaining in the Public Service.

16.2.4 The Supreme Court of Canada has ruled that, for labour relations purposes (i.e. whether an individual is an employee for collective bargaining purposes), a person can be employed in that part of the Public Service for which the Treasury Board is employer only if

- a position has been created by a Minister or deputy head,
- the position has been classified by the Treasury Board, and
- the Public Service Commission, or its properly authorized delegate, has appointed the person to the position.

Only a duly appointed employee of the Public Service can enjoy the benefits of a public servant under the *Public Service Employment Act* (employee rights) and the *Public Service Staff Relations Act* (right to collective bargaining).

16.2.5 While the Public Service Commission's appointment authority can be delegated to departments and agencies, contracting authorities cannot employ persons in the Public Service without complying with the *Public Service Employment Act*. Appointments to positions in the Public Service must be made under the statutory regime established by that Act and not under contract. Contracting authorities, therefore, do not have the legislative authority to create employer-employee relationships by way of contract, however an improperly construed contract for services may evolve into an employer-employee relationship at common law.

16.2.6 There are exceptions to these rules. For example, Cabinet directly appoints a number of high ranking officials in the Public Service and ministers can hire members of their own offices. In addition, while many of these rules apply to employment by "separate employers," each separate employer has a distinctive employment regime.

16.2.7 Contracting authorities cannot use contracts for services to circumvent the requirements of the statutory employment regime established by the *Public Service Employment Act*. In other words, contracting authorities cannot sign contracts with individuals that would, in the absence of the Public Service employment regime, create employer-employee relationships according to the rules of the common law.

16.2.8 Contracting authorities who circumvent the requirements of the *Public Service Employment Act*, by signing contracts that create employer-employee relationships at common law risk incurring liability under the following statutes the *Canada Pension Plan*, the *Canadian Human Rights Act*, the *Crown Liability Act*, the *Government Employees Compensation Act*, the *Income Tax Act*, the *Official Languages Act* and the *Employment Insurance Act*. Under those statutes, the Crown may incur liability for persons having the attributes of employees, or "servants," at common law. For example, the Minister of National Revenue may assess a department for source deductions pursuant to the *Employment Insurance Act*.

16.2.9 On the other hand, contracting authorities may be able to respond to challenges, especially to challenges or liabilities related to employee-related benefits, by using the rationale of the "trilogy" of statutes argument cited in paragraph 16.2.3 (above).

16.3 Employer-employee relationships

16.3.1 Outside the Public Service, the existence of employer-employee relationships is determined according to a number of tests established by the common law (*droit coutumier*). It is virtually impossible to lay down general rules on the meaning of employment at common law that apply uniformly and without exception; each relationship is assessed individually. That said, an employee (or "servant") at common law is a person who works for salary and wages and is under the supervision and direction of his or her employer; an independent contractor, in contrast, is his or her own master.

16.3.2 As provided in paragraph 4.1, Contract Policy Requirements, contracting authorities are to ensure that an employer-employee relationship will not result from a contract for services. A contract for services that is initially sound should not develop over a period of time into a work situation that would constitute an employer-employee relationship according either to the *Public Service Employment Act* or the common law. Therefore there should be appropriate safeguards in contracting procedures to avoid such relationships.

16.3.3 *Appointment under the Public Service Employment Act*. In order to be appointed to a position under the *Public Service Employment Act*, (i.e. to be employed in the Public Service), there must be evidence of:

- financial approval (classification) for the position by the Treasury Board or its delegate;
- an administrative decision to make an appointment to a position;
- a process of selection according to merit;
- a process of personnel selection by competition or otherwise.

16.3.4 For guidance in assessing an employer-employee relationship:

- a. consult CRA's current guidance, for example, "[Employee or Self-Employed?](#)", [publication number RC4110](#);
- b. refer to the following sections of the Contracting Policy,
 - 16.2 Contracting for the services of individuals and Public Service Employment, and
 - 16.3 Employer-employee relationships in its entirety
- c. seek legal advice from the Department of Justice, where it is not feasible for officials to determine whether a contract is a contract for services or a contract of employment (*i.e.*, employment status is not easily identifiable). However, the role of the Department of Justice in these cases is only advisory. It is ultimately the responsibility of Contracting Authorities to ensure that contracts do not create employer-employee relationships.

16.3.5 Deleted.

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16.3.11.1 Deleted.

16.3.11.2 Deleted.

16.3.11.3 Deleted.

16.3.12 Deleted.

16.4 Contracts for research and development

16.4.1 Research and development services and related scientific activities may be obtained from the private sector.

16.4.2 Research and development service contracts may be entered into when:

- a. there is an established government contracting-out policy, or it is demonstrably more cost-effective to have the work done by the private sector;
- b. the requirement can be defined in advance well enough that it will not depend on a series of ad hoc assignments over the course of the contract; and
- c. an employer-employee relationship will not develop.

16.5 Remuneration and fee policy

16.5.1 *Market rates.* Normally, the use of the competitive process will result in the establishment of appropriate market rates under a contract. Remuneration, including fees that are not established by price competition, should be negotiated on the basis of usual market rates for the type of work required. Market rates are comparable to those the contractor has charged for similar work under the same conditions in the same geographical area. Market rate may therefore be considered the same as going rate.

16.5.2 In all cases, the fees or remuneration should be in line with the contractor's established market rate.

16.5.3 When the work contains a number of related phases, separate fee arrangements may be necessary for each phase.

16.5.4 *Fees for consulting and professional services.* Remuneration for consulting and professional services depends on the type of service provided, its complexity and the conditions under which it is performed. The competitive process should be the norm for establishing appropriate fees. In most cases, remuneration is in two parts: the fee for the services rendered and expenses for overhead, administration, and profits. Fees may be determined on the basis of time and rates, as an agreed lump sum (firm price or ceiling price) or, in the case of architectural or engineering contracts, as a percentage of the estimated or contract cost of the work. Expenses, on the other hand, are authorized direct out-of-pocket costs incurred by the contractor in providing the required services.

16.5.5 The various standard methods for calculating fees, definitions of costs, and the more common bases of payment for consulting and professional services contracts are shown in Appendix J.

16.5.6 *Fee schedules of associations.* In determining the market rate of an individual or firm, fee schedules issued by professional associations may be used only as a guide. The fees suggested by professional associations may, in fact, be paid by the contracting authority only when the fee reflects the market or going rate of the individuals.

16.5.7 In rare cases, when the work requirement is unique and no comparable fee can be determined, pay scales for positions in the public service requiring similar qualifications may be used as a guide in negotiating an appropriate fee.

16.5.8 Deleted.

16.5.9 The equivalent ceiling in time rates should be established by the contracting authority, based on the definition of a normal working day appropriate to the particular requirement.

16.5.10 Per diem rates are payable for a minimum of 6 hours' work in a 24-hour period. Less than this should result in prorating of the per diem rate.

16.5.11 As discussed in article 10.6.10, a multi-year or time-phased contract should clearly indicate in the "Terms of Payment" the cost for each phase. If this is not feasible, the contract should provide for adjustments to the contract price on the basis of an agreed rate or formula set out in the same section. Single contracts with multiple phases and established costs for each phase are preferable to separate consecutive contracts that give the previous contractor a competitive advantage. When it is impossible to establish rates for future years and/or contract phases at the time the contract is awarded, a formula should be developed that relates current prices to appropriate published data such as the price indices published by Statistics Canada. This formula should be used for negotiating any future price changes.

16.5.12 Consistent with section 12.11.10, contracts should include an appropriate penalty clause where the deliverable involves reports or studies.

16.5.13 Prospective contractors are expected to divulge whether they have previously undertaken similar or related studies at federal expense. Contracting authorities should follow up affirmative responses to ascertain whether earlier studies will satisfy all or part of the current need.

16.5.14 *Honorarium payments.* An honorarium payment is not one made under a contractual arrangement; rather, it is a gratuitous payment as distinguished from compensation for service or hire, and the recipient, if not paid, cannot sue in a Court of Law. Accordingly, the Contracting policy does not govern honoraria.

16.6 Total value of the contract

16.6.1 The total value of any service contract includes the basic remuneration or fee, all overhead, administration, profit, travel and living expenses and all applicable taxes, including GST and HST.

16.7 Contracting with non-nationals

16.7.1 As stated in article 4.2, Related requirements, contracts for service are to reflect current federal policies on international relations. Where it is not possible to satisfy the requirement with Canadian contractors, foreign firms or individuals may be awarded contracts. Where it is proposed that a foreign contractor carry out the work within Canada, the requirements of federal immigration and health policies are to be observed. The contractor is responsible for satisfying these requirements.

16.8 Deleted.

Deleted.

16.9 Contracting with public servants

16.9.1 There is no prohibition against contracting with full or part-time public servants. However, any contracts with employees should reflect the provisions of Paragraph 6(b) of the *Conflict of Interest and Post-Employment Code for the Public Service* which states, "employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law".

16.9.2 There are rare occasions where it is cost efficient and effective to enter into a contract with an employee of the Government of Canada to provide some unique service outside the scope of the

employee's usual duties. Contracts for services should not be used to acquire overtime services that would normally be an extension of the employee's regular duties. A contract with a public servant is subject to the same conditions that govern all contracts. The competitive approach should be followed and if a contract is awarded to a public servant it should not give rise to any suggestion of favouritism or special privilege to the contractor.

16.9.3 Before any public servant accepts a contract from the Crown, Section 121(1)(c) of the *Criminal Code* requires that the "consent in writing of the head of the branch... be obtained by the employee". Contracting authorities should make prospective employee/contractors aware of this requirement of the law.

16.10 Consulting and professional services

16.10.1 Contracts with consultants or professionals may be entered into for specialized services when:

- the advice or services sought and the resulting expenditure can be justified as necessary to satisfy program requirements;
- the services can be defined well enough to form the basis of a contract;
- the services are available at reasonable cost; and
- their use is consistent with specific government policies.

Section 16.10 does not apply to the following:

- legal services,
- training and educational services,
- health and welfare services,
- protection services,
- advertising, printing and publishing services,
- data processing services,
- motion picture production and distribution,
- storage, warehousing and custodial services,
- building cleaning and laundry services,
- transportation and communication services,
- repair, overhaul, maintenance and upkeep services.

16.10.2 The requirements in subsection 16.10 should be used with discretion on contracts valued at \$40,000 or less.

16.10.3 *Competition for consultants or professionals.* Procedures and source lists should be designed to ensure that qualified individuals or firms are not omitted from consideration and that there is a fair opportunity for those qualified to obtain a share of the available work. Repeat commissioning of a firm or individual without competition should not become a practice, even if the value of the contract is under the mandatory threshold for the calling of bids.

16.10.4 *Inventories and source lists.* Representative and up-to-date inventories or source lists of firms that provide consulting and professional services and wish to do business with the federal government should be maintained for consistency, economy, effectiveness and fairness in selecting and procuring best value. These inventories should be consulted before inviting bids or proposals or recommending a non-competitive selection.

16.10.5 Contracting authorities who frequently engage the services of consultants or professionals should establish and maintain at least one inventory containing a representative number of firms and individuals from which consulting and professional services can be obtained. These inventories should be established initially by recording those firms and individuals who have provided consulting and professional services to the department or have expressed an interest in doing so. Contracting authorities may solicit expressions of interest by inviting firms and individuals to complete a questionnaire providing standard information such as that shown in Appendix J. To avoid duplication of effort, contracting authorities should cooperate in exchanging lists and data held in their respective inventories. Inventories should contain the following data:

a. Identification

- Name: of firm or individual as it will appear on contracts.
- Address: branch offices indicated where appropriate.
- Affiliation: names and addresses of other firms and their relationship.
- Ownership: country in which controlling interest is held.

b. Qualifications

- Field(s): of expertise.
- Type(s): of service offered.
- Language(s): in which services are available.
- Principals and senior officers: names and résumés showing experience and qualifications.

c. Capacity

- Business volume: total sales for each of the past five years.
- Number of staff: in total and by specialty, employed in each of the past five years.
- Facilities: any specialized equipment or facilities such as instruments, computers, special mobile units or laboratories that are owned or generally leased.

d. Work History

- Recent contracts: are representative of the firm's experience and capability (value, type of work and client's name should be stated). When the client was a federal department or agency, the location, date, dollar value, responsible contracting authority and file reference number should be given.

e. Evaluation

- evaluation reports on recent government contracts completed by the consultant or professional, included in the inventory as sensitive information requiring protection (see article 16.11.6). Firms should be asked to report at least once a year any changes in previously-reported information.

16.11 Administration of consulting and professional services contracts

16.11.1 Contracts for consulting and professional services may result in additional administrative or management provisions.

16.11.2 As envisaged in Section 4, Policy requirements, the contracting authority is responsible for including in the contract appropriate mechanisms for monitoring the work, in co-ordination with other related activities, and its redirection, if necessary.

16.11.3 The contracting authority should appoint a procurement officer and the technical authority should appoint a project officer (who may be the same person), to be responsible and accountable for monitoring the work through:

- a. regular physical progress and financial reports from the consultant or professional;
- b. attending progress meetings with the consultant or professional;
- c. examining the work in progress to ensure conformity with contract requirements;
- d. monitoring time, resource, cost and quality aspects of the work against a pre-determined and agreed work plan;
- e. amending the contract to reflect new requirements, work schedules and payment provisions in response to changing circumstances;
- f. conducting technical and financial audits;
- g. accepting or approving the work at intermediate stages and at completion;
- h. certifying all payments and following up to ensure timely payment.

The division of these responsibilities among authorities should be agreed to before placing the contract.

16.11.4 The consultant or professional is responsible for controlling the work under contract to achieve the objectives within the time and budgetary constraints established.

16.11.5 *Conflict of interest* (see article 12.5.3.). A consultant or professional, by virtue of the kind of service provided, may be in a position to exercise a bias toward a third party that could put the latter in a favoured position for future business with the Crown. If the consultant, professional or principals have a financial interest in the business of this third party, the possibility of a conflict of interest should be considered. To avoid a conflict of interest, contracting authorities should, before signing a contract, require the selected consultant or professional to sign a declaration, either as part of the contractor separately, stating that no pecuniary interest in the business of any third party exists that would affect objectivity in carrying out the contract.

16.11.6 There are also situations where, in meeting its obligations to a contracting authority, a contractor may be in a position of potential conflict with competing or opposing interests of the contractor's other clients, either during the period of or subsequent to this particular contract. Contractors are expected to inform the contracting authority of these potentially competing services and interests, and explain why the situation would not represent a conflict of interests. Where appropriate, a contracting authority should require a contractor to sign a declaration, either as part of a contract or separately, that the contractor has no, and will not have, during the course of the contract and subsequent to it, any conflict arising from competing or opposing interests of other clients of the contractor. The possible wording for such a declaration is included in Appendix G.

16.11.7 Contractors should be also made aware that any real or perceived conflict of interest, which has not been satisfactorily resolved, could result in their contract with a contracting authority being terminated.

16.11.8 *Performance evaluation*. On completion of the contract, the contracting authority should evaluate the work performed by the consultant or professional. The evaluation should be undertaken by officials competent in the particular fields involved. If judgmental comments are provided, they should be supported by complete and factual detail. This is particularly important when the evaluation is not favourable.

16.11.9 The consultant or professional should receive a performance critique and be allowed to respond for the record.

Evaluation reports should include:

- a. a general description of the work undertaken, its location and the terms of reference;
- b. the quality of the work performed;
- c. the efficiency of the consultant or professional in managing time and resources;
- d. the capabilities of any outstanding specialists assigned to the work;
- e. an analysis of the cost of the work and the estimated value received;
- f. recommendations for further consideration.

16.12 Temporary help services

16.12.1 Contracts for temporary help services are discussed in Section 4, Policy requirements and in article 4.2, Related requirements. Further instructions related to these types of contracts are found in Appendix I.

16.13 Contracting for Advertising and Public Opinion Research Services

16.13.1 When contracting for public opinion research and advertising, reference should also be made to the Communications Policy, the Common Services Policy and the Management of Government Information Holdings Policy.

16.13.2 At the beginning of a project planning process for public opinion research and advertising, departments and agencies must notify Public Works and Government Services Canada's Government Information Services Branch, if the project may result in the award of a contract. A project registration number will be provided by that branch to authorize Public Works and Government Services Canada to award a contract for these services on behalf of departments.

16.13.3 Public Works and Government Services Canada is responsible for awarding public opinion research and advertising contracts.

16.13.4 As part of its contracting responsibilities, Public Works and Government Services Canada ensures that a significant level of Canadian participation is achieved by having the advertising work performed in Canada in a manner consistent with the nature of the requirements.

16.13.5 A definition of advertising is provided in the [Communications Policy of the Government of Canada](#).

16.13.6 A definition of public opinion research is provided in the [Communications Policy of the Government of Canada](#).

16.14 Deleted

Deleted.

16.15 Preparation of T1204 Supplementary Slips for Contracts for Services

16.15.1 As mentioned at paragraph 4.2.6 of this policy, pursuant to paragraph 221(1)(d) of the *Income Tax Act*, payments exceeding \$500.00 made by departments and agencies under applicable service contracts, including contracts involving a mix of goods and services, must be reported on a T1204 supplementary slip.

16.15.2 Departments must report on a T1204 any payments related to printing contracts in the manner indicated in this section.

16.15.3 *Exceptions.* Contract purchases for services that are exempt under this requirement (i.e., do not require T1204 slips) are direct purchases made using acquisition cards, direct purchases under local purchase orders, grants and contributions, utility payments, and rental or leasing of office space and equipment and other "goods".

16.15.4 The amount to be reported on each information slip is the total of payments made to the enterprise in the calendar year, including any goods portion, expenses, indirect costs, etc., but excluding GST/HST.

16.15.5 All forms of enterprises should receive these slips, including sole proprietorships (individuals), corporations and partnerships.

16.15.6 Slips are required for service contracts where a Canadian resident is working outside the country. The payments made to non-residents providing services in Canada are not reported on T1204 supplementary slips, not being part of this reporting requirement. See section 16.15 for information on tax treatment of non-residents who perform services in Canada.

16.15.7 To comply with this requirement, T1204 slips must contain the following information:

- a. the legal name of the contractor, as applicable, i.e. the name associated with one of the CRA identifier (see (c) below), as well as the business address and postal code. If the contractor is a sole proprietor, the contractor's last name, first name and initial must also be reported;
- b. a code to distinguish the type of enterprise (sole proprietorship, corporations or partnership);
- c. the contractor's identifier(s), depending on the contractor's type of enterprise:
 - i. for sole proprietorships, the contractor's SIN and the contractor's Business Number or GST/HST Number if the contractor has one;
 - ii. for corporations, the contractor's Business Number or GST/HST Number; alternately, the T2 Corporation Tax Number;
 - iii. for partnerships, the contractor's Business Number or GST/HST Number and the Partnership filer Identification Number if the contractor has one.
- d. The total amount paid to the contractor for the calendar year (e.g., from January 1, 2001 to December 31, 2001).

16.15.8 Departments and agencies will have to certify, as much as possible, that the information the contractor gave is complete and accurate.

16.15.9 Canada Customs and Revenue Agency has prepared a *Federal Departments, Agencies and Crown Corporations Guide* that provides general information on reporting and filing payment information. For information on the classification of service contracts, consult the Services section of the Master List of Objects of Expenditures (economic objects) in the [Treasury Board Chart of Accounts](#).

16.16 Tax Treatment of Non-Residents Who Perform Services in Canada

16.16.1 Every payer, including a non-resident payer, who makes a payment to a non-resident of Canada for services provided in Canada must withhold and remit an amount in accordance with the requirements under the *Income Tax Act* of Canada (the Act).

16.16.2 Generally, the rules for the computation of income from a business apply equally to residents and non-residents. Any exceptions are clearly expressed in the Act in the *Income Tax Regulations*. Under Part I of the Act, a non-resident is subject to tax on the income earned in Canada that is attributable to services provided.

16.16.3 Paragraph 153(1)(g) of the Act and subsection 105(1) of the Regulations (Regulation 105) are the authority to withhold tax on fees, commissions, and other amounts paid to non-residents of Canada, other than employees, for services rendered in Canada. The rate of withholding is 15% of the gross amount paid.

16.16.4 The remitting requirements for the Regulation 105 withholding tax are outlined under subsection 108(1) of the Regulations (Regulation 108). Regulation 108 requires that the withholding taxes are to be remitted by the 15th of the month following the month in which the amounts were deducted or withheld.

16.16.5 The only alternative to the requirements of Regulation 108 is for the non-resident to obtain a waiver, or a reduction in the withholding tax. If the payer has not obtained written notification from Canada Customs and Revenue Agency, the required withholding tax is mandatory. Failure to deduct or remit an amount under Regulation 105 may result in an assessment of the outstanding amount, plus interest and penalty, pursuant to section 227 of the Act.

16.16.6 All payers, resident or non-resident, must report to Canada Customs and Revenue Agency payments to non-resident persons for services provided in Canada.

- a. These payments are to be reported on a T4A-NR Supplementary slip, *Statement of Fees, Commissions, or Other Amounts Paid to Non-Residents for Services Rendered in Canada*. This information slip is to be completed and issued by the payer(s), regardless of the amount paid or the taxes withheld.
- b. All T4A-NR Supplementary slips must be sent to Canada Customs and Revenue Agency by the payer together with a T4A-NR Summary, *Summary of Fees, Commissions, or Other Amounts Paid to Non-Residents for Services Rendered in Canada*, on or before, the last day of February of the year following the year in which the income was paid. Provide the non-resident recipient with Copy 3 of this slip by the same date as noted above.

16.16.7 The required withholding tax is considered a payment on account of the non-resident's overall tax liability to Canada. It is not Canada Customs and Revenue Agency's intent to inconvenience non-residents who may not be taxable in Canada. One of the Department's responsibilities is to ensure that all clients are treated in a consistent and fair manner.

16.16.8 Where a non-resident can adequately demonstrate that the withholding tax normally required is in excess of their ultimate Canadian tax liability, the Department may reduce or waive the withholding tax accordingly. A waiver or reduction of the withholding requirements is considered pursuant to the application of subsection 153(1.1) of the Act, "Undue Hardship." The onus is on the non-resident to demonstrate to the Department that a waiver or a reduction of the amount required to be withheld is

justified. This may be based on the application of the treaty of their country of residence or through an estimated income and expense statement.

16.16.9 A waiver application should be submitted to the tax services office that serves the area where the services are to be provided. The Department requires 30 days to process requests for waivers based on treaty protection and 10 days for requests based on an estimated income and expense statement. This allows all non-residents the opportunity to have their tax affairs reviewed before the services are performed. A waiver application must contain sufficient documentation and information to establish if a waiver is justified.

16.16.10 Additional information about the withholding, remitting, and reporting responsibilities relating to non-residents who provide services in Canada is available from any of Canada Customs and Revenue Agency's tax services offices.

16.17 Contracting for the provision of energy services

16.17.1 The procurement of electricity or natural gas is considered a service procurement.

16.17.2 Departments must meet energy needs in accordance with the federal or provincial jurisdiction of the requirement as applicable. Regulation of energy utilities ranges from fully regulated, partially deregulated to fully deregulated. The nature of the regulation will govern the procurement arrangements.

16.17.3 Departments may enter into contracts based on the authority and conditions contained in the Treasury Board Contracts Directive, Part II, Exceptional Contracting Limits, Section 1 (Appendix C of the Contracting Policy).

Appendix A – Definitions

Published December 12, 2000. The contents of this appendix are mandatory since they are generally related to policy requirements.

This Appendix contains definitions of terms used in this volume excluding terms defined in the *Government Contracts Regulations* (see Appendix B).

advance contract award notice (ACAN) (*préavis d'adjudication de contrat*)

An Advance Contract Award Notice (ACAN) allows departments and agencies to post a notice, for no less than fifteen calendar days, indicating to the supplier community that it intends to award a good, service or construction contract to a pre-identified contractor. If no other supplier submits, during the fifteen calendar day posting period, a statement of capabilities that meet the requirements set out in the ACAN, the competitive requirements of the government's contracting policy have been met. Following notification to suppliers not successful in demonstrating that their statement of capabilities meets the requirements set out in the ACAN, the contract may then be awarded using the Treasury Board's electronic bidding authorities.

If other potential suppliers submit statements of capabilities during the fifteen calendar day posting period, and meet the requirements set out in the ACAN, the department or agency must proceed to a full tendering process

on either the government's electronic tendering service or through traditional means, in order to award the contract.

amount (*montant*)

the consideration to be given by the contracting authority under the terms of the contract, whether the consideration is fixed or estimated.

architectural and engineering service contract (*marché de services d'architectes et d'ingénieurs*)

a contract for the provision of services in respect of the planning, design, preparation, or supervision of the construction, repair, renovation or restoration of a work.

award (*adjudication*)

the notification to a bidder that a bid or proposal is accepted.

best value (*meilleure valeur*)

the combination of price, technical merit, and quality, as determined by the contracting authority prior to the bid solicitation and set out in the bid solicitation evaluation criteria, and which forms the basis of evaluation and negotiation between buyers and sellers to arrive at an acceptable basis for a purchase and sale.

bill of exchange (*lettre de change*)

an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand, at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

claimant's payment bond (*cautionnement pour le paiement du demandeur*)

a bond given by a person in a construction contract situation to guarantee the payment of one or more second-tier claimants, either sub-subcontractors or third level suppliers, if disputes between the person and those claimants are resolved in favour of the latter.

common service organization (CSO) (*organisation de services communs*)

an agency whose activities are directed mainly toward serving other departments and agencies.

competitive contract (*marché concurrentiel*)

a contract where the process used for the solicitation of bids enhances access, competition and fairness and assures that a reasonable and representative number of suppliers are given an opportunity to bid by:

Either

- a. giving public notice, using electronic bidding methodology, possibly supplemented by traditional bidding procedures, of a call for bids for a proposed contract or of an intention to award a contract to a pre-identified contractor (a directed contract advertised by an Advance Contract Award Notice – ACAN), in accordance with limited tendering reasons set out in the trade agreements, or in accordance with the exceptions to bidding set out in section 6 (of the *Government Contracts Regulations (GCRs)*,

and where

1. in the case of a call for bids, the lowest bid or the bid that offered the best value, as set out in the evaluation criteria in the bid solicitation and as determined by the contracting authority,

- was accepted;
2. in the case of a call for bids where only one bid, compliant with mandatory criteria set out in the bid solicitation was received, fair value to the Crown, as determined by the contracting authority, was obtained; or
3. in the case of an ACAN, no valid statement of capabilities is submitted to the proposed award were received within the fifteen calendar day posting period.

OR

- b. giving public notice, using traditional bidding procedures (such as a suppliers' list, etc.) and in a manner that is consistent with generally accepted trade practices, of a call for bids for a proposed contract,

and where

1. in the case of a call for bids, the lowest bid or the bid that offered best value, as set out in the evaluation criteria in the bid solicitation and determined by the contracting authority, was accepted; or
2. in the case that only one bid, compliant with the mandatory criteria set out in the bid solicitation was received, fair value to the Crown, as determined by the contracting authority, was obtained.

consultant (*consultant*)

an individual or firm which provides either advice or a professional service. (see also *professional*)

consulting and professional services (*services de conseil et services professionnels*)

services provided by individuals with significant training, qualifications and expertise in a professional, scientific, technical or managerial field. For example, the term "professional" has legal connotations for certain professions; for other occupations it denotes an accepted as evident degree of competence. Consulting and professional usually include: research and scientific studies including interpretation, architectural and engineering services, planning and development, data collection, auditing and certain aspects of electronic data processing. This listing is not exhaustive and contracting authorities should interpret each situation on a case by case basis.

contract (*marché*)

an agreement between a contracting authority and a person or firm to provide a good, perform a service, construct a work, or to lease real property for appropriate consideration.

contract amendment (*modification d'un marché*)

an agreed addition to, deletion from, correction or modification of a contract.

contract costs (*coût d'un marché*)

For purposes of the Treasury Board Contracting Policy, the *Government Contracts Regulations* and other related instruments or documents the costs include all elements that are included in the consideration which is to be paid by the Crown to a contractor under the terms of a contract, and for greater certainty these elements include all fees and taxes that are legally levied and become payable by the contractor as a result of the performance of the contract.

contract splitting (*fractionnement d'un marché*)

the practice of unnecessarily dividing an aggregate requirement into a number of smaller contracts, thereby avoiding controls on the duration of assignments or contract approval authorities.

contractual arrangement (*accord contractuel*)

an agreement between a contracting authority and entity of the Crown (e.g., Crown Corporations, provincial governments or municipalities) to provide a good, perform a service, construct a work or to lease real property for appropriate consideration. These types of agreements are not contracts in the true sense but are still subject to certain limits or constraints imposed by the Treasury Board.

cost plus fixed fee (or a percentage of cost) (*coût plus honoraires fixes*)

a payment arrangement whereby the contractor receives costs reasonably and properly incurred as determined by audit plus an agreed fixed fee (or a percentage of cost) by way of profit.

directed contract (*marché prescrit*)

a contract awarded to a preselected contractor in circumstances where the contracting authority has justifiably set aside the requirement to solicit bids under the provision of one or more of the exceptions to competitive solicitation in Section 6 of the Government Contracts Regulations. Contracting authorities are strongly encouraged to provide public notification of these contracts through an Advance Contract Award Notice (ACAN) using the electronic bidding methodology. If this is done and if there are no valid challenges received to the ACAN within 15 days, the directed contract is deemed to be competitive and may be awarded using the higher electronic bidding contracting authority levels.

disbursements (*débours*)

direct out-of-pocket expenses incurred.

electronic bidding (*invitation électronique à soumissionner*)

a method of procurement that promotes suppliers' access to, and transparency in, the procurement process and facilitates the Crown's receipt of best value, by using:

- a. public notice by means of an approved electronic information service of procurement opportunities;
- b. public notice by means of an electronic information service of proposed directed procurements by means of an Advance Contract Award Notice (ACAN); or
- c. such other procurement methods as may be approved by the Treasury Board.

emergency contact (*marché d'urgence*)

a contract which would normally require Treasury Board authority but is initiated in response to a pressing emergency in which delay would be injurious to the public interest.

employee takeover (*prise en charge de services de l'État par des fonctionnaires*)

is an agreement entered into by the Government of Canada with an employee takeover company, comprised of the former employee or group of former employees who have left the Public Service and provide for the government, from the private sector, the same or a similar service that he, she or they performed while working in the Public Service. This policy allows the employee or employee group to establish a private-sector entity to negotiate or compete for a government service-delivery contract. This contract may include a lease or license.

employee takeover company (*entreprise créée aux fins de la prise en charge*)

is a company, legally incorporated by the employee or employee group, who leave the Public Service and provide for the government, from the private sector, the same or a similar service that he, she or they performed while working in the Public Service. In this context, irrespective of whether an employee takeover company has more than one employee-owner and/or offers shares to former employees, ownership is defined in terms of control and significant influence over the operations and management structure of the corporation. This company may be the same employee association incorporated to develop proposal(s). It is possible that the employee takeover company is controlled by the former employees collectively and that it does not necessarily have a principal owner.

ex gratia payment (*paiement à titre gracieux*)

a payment where a legal liability does not exist or where it is uncertain that a legal liability exists under the contract.

fair value (*juste valeur*)

- a. the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm's length who are fully informed and not under any compulsion to transact.

The word "fair" implies a concept of a market which is not disturbed by unpredictable economic factors, e.g. boom or depression (23/06/94 – PWGSC *Supply Manual*, February 16, 1998).

OR

- b. the value of a good or service as determined by negotiation between buyers and sellers and which value would be acceptable as a basis of a purchase and sale. (adapted from *Aljian's Purchasing Handbook*, Fourth Edition, McGraw-Hill Book Company, 1982.)

firm (fixed) price (*prix ferme*)

a method of pricing in which the total is a fixed lump sum or an amount made up of fixed unit prices. In such cases, both parties agree on the price to be paid before the contract is awarded.

firm price contract (*marché à prix ferme*)

a contract specifying the total payable or one in which the total payable can be calculated by multiplying identical units of work or items delivered by a fixed unit price.

fixed time rate (*taux fixe au temps*)

a method of pricing in which the amount payable is determined by expressing the cost of labour, overhead and profit as a fixed amount by time period.

fixed unit price (*prix fixe unitaire*)

a method of pricing in which the total payable is calculated by multiplying the number of identical units of work or items delivered by a fixed price per unit or item.

former public office holder (*ancien titulaire de charge publique*)

- a. a former Minister of the Crown;
- b. a former parliamentary secretary;
- c. a former full-time Governor-in-Council appointee, other than a former Lieutenant-Governor of a province and a former judge who received a salary under the *Judges Act*;

- d. a former employee of a department at a level of senior manager or above, or the equivalent, for whom Treasury Board represents the government as employer;
- e. every former member of ministerial exempt staff designated by the responsible minister to be subject to this part;
- f. a former full-time ministerial appointee designated by the responsible minister to be subject to the Conflict of Interest and Post Employment Code for Public Office Holders;
- g. every former member of the Canadian Armed Forces at a rank of, or above, colonel, or the equivalent;
- h. a former commissioned officer of the Royal Canadian Mounted Police; and
- i. the former incumbents of any other positions designated by Treasury Board.

former public servant (*ancien fonctionnaire*)

any former member of a department as defined in the *Financial Administration Act*, a former member of the Canadian Armed Forces or a former member of the Royal Canadian Mounted Police.

government pension (*pension de l'État*)

superannuation or pension benefits payable out of a pension plan established for employees of Boards, Commissions and Corporations specified in Schedule A to the *Public Service Superannuation Act* (PSSA), as indexed by the *Supplementary Retirement Benefits Act*.

holdback (*retenue*)

the amount withheld under the terms and conditions of a contract.

lease (*bail*)

a contract whereby Her Majesty acquires a leasehold interest in real property situated in or outside Canada and includes a tenancy agreement and a licence in respect of real property.

non-competitive contract (*marché non concurrentiel*)

any contract for which bids were not solicited or, if bids were solicited, the conditions of a competitive contract were not met.

operating cost (*coût d'exploitation*)

the cost of operating, maintaining and repairing an acquisition throughout its useful life, less its estimated residual value at the time of retirement.

overhead costs (*frais généraux*)

the indirect costs associated with operating a business that, unless otherwise stated, are assumed to be included in a multiplying factor or percentage applied to payroll costs.

payrolling (*embauchage obligatoire*)

the practice by which firms are instructed by a government department or agency to employ specified individuals who are then assigned to provide services to that department or agency under contract.

pressing emergency (*extrême urgence*)

a situation where delay in taking action would be injurious to the public interest.

procurement (*acquisition*)

the function of obtaining goods and services and carrying out construction and leasing through contractual arrangements.

professional (*professionnel*)

see consulting and professional services above.

professional services (*services professionnels*)

see consulting and professional services above.

proposal (*proposition*)

a tender, bid or offer, either unsolicited or submitted in response to an invitation from a contracting authority. A proposal is usually requested when a contractor is to be chosen on the basis of the performance offered rather than on price alone. Proposals may require details such as the firm's qualifications and experience and the identification of problems and proposed solutions.

public notice (*avis public*)

an announcement on an approved electronic information service, in one or more newspapers, or by means of some other accepted media.

resource cost (*coût de ressources*)

the indirect cost incurred by a requisitioning department and/or the common service agency.

standing offer (*offre à commandes*)

an offer from a potential supplier to supply goods, services or both, on the pricing basis and under the terms and conditions stated in the standing offer.

statement of work (*énoncé des travaux*)

the specification of the work a contractor is required to do.

surety bonds (*cautionnements*)

security given by a third party to indemnify the contracting authority, within specified financial limits, against a contractor's failure to carry out the terms of the contract. Surety bonds can be in the form of a bid bond, a payment bond or a performance bond.

target price (fixed fee and incentive fee formula) (*prix visé*)

a method of pricing in which the contractor is paid costs reasonably and properly incurred as determined by audit, an agreed fixed fee as profit, and an incentive fee on any savings achieved between a prescribed target cost and the actual cost as established by audit. A target price contract may also include a ceiling price.

temporary help firms (*sociétés de placement temporaire*)

business organizations providing temporary help services and consisting of more than one employee or principal.

temporary help services (*services de travail temporaire*)

services provided under contract to the government for assignments in which the employees of a firm are engaged to provide services to a department or agency on a temporary basis.

valid bid (*soumission valide*)

a priced offer that is either unsolicited or is in response to a solicitation that meets all the requirements stipulated in that solicitation.

Appendix B – Regulations respecting government contracts

[The Government Contracts Regulations.](#)

Appendix C – Contracts Directive

This directive is mandatory, as prescribed by the Treasury Board. It applies to contracting authorities as defined in the *Government Contracts Regulations* with the exception of contracting authorities in the schedule to the Regulations and Commissions created pursuant to the *Inquiries Act*.

Part I: basic contracting limits

Entry into a contract or contractual arrangement must be approved by the Treasury Board if the amount payable, including all applicable taxes, fees and amendments, exceeds the stated monetary (CAN\$) limit for the contracting authority identified in the basic limits schedules.

When an exceptional limit for a specified program is lower than the basic limit for its corresponding schedule, the lower exceptional limit applies.

Schedule 1: construction

Department or agency	Competitive	Non-competitive
Public Services and Procurement Canada	\$75,000,000	\$1,250,000
All other departments and agencies	\$750,000	\$100,000

Schedule 2: goods

Department or agency	Competitive	Non-competitive
Public Services and Procurement Canada	\$75,000,000	\$3,750,000
Shared Services Canada	\$75,000,000	\$3,750,000
National Defence	\$7,500,000	\$375,000
All other departments and agencies	\$750,000	\$100,000

Schedule 2A: specialized goods

Department or agency	Commodity	Competitive	Notes
All departments and agencies	Bulk fuel	\$10,000,000	Applies to call-ups against a standing offer established by Public Services and Procurement Canada

Schedule 3: services

Department or agency	Competitive	Non-competitive
Public Services and Procurement Canada	\$37,500,000	\$5,750,000
Shared Services Canada	\$37,500,000	\$5,750,000
National Defence	\$7,500,000	\$375,000
Transport Canada	\$7,500,000	\$250,000
Fisheries and Oceans Canada	\$7,500,000	\$200,000
All other departments and agencies	\$3,750,000	\$200,000

Schedule 3A: specialized services

Commodity	Department or agency	Competitive	Non-competitive	Notes
Architectural and engineering services	Public Services and Procurement Canada	\$7,500,000	\$200,000	Where the Treasury Board has approved an increased amount of a competitive architectural and engineering services contract, the contract amounts stated above can be amended by \$250,000 for competitive contracts and \$100,000 for non-competitive contracts.
	All other departments and agencies	\$60,000	\$60,000	n/a
Transportation services from common carriers	All departments and agencies	Unlimited	n/a	Rates charged must not exceed the normal rates for such services.
Energy services	All departments and agencies	\$25,000,000	\$25,000,000	Applies to service contracts issued pursuant to the Natural Resources Canada Federal Buildings Initiative, in accordance with Appendix O of the Treasury Board <i>Contracting Policy</i> for the acquisition of energy supply, energy efficiency improvements, energy management services, and energy management monitoring and training. Each custodian's first energy management contract over \$1,000,000

				must be submitted for Treasury Board approval.
Regulated services	All departments and agencies	n/a	Unlimited	Services must be at regulated prices or at prices accepted by a regulatory mechanism, including electricity, gas, water, sewage disposal, heat, postage and telecommunications, and the contract does not involve negotiated installation or capital charges in excess of \$200,000. Includes services with a railway, telegraph, telephone, or power company for permission to attach wires to poles belonging to the company. Rates or amounts must not exceed those normally charged.
Deregulated services	Public Services and Procurement Canada	\$300,000,000*	n/a	*Applies to non-regulated telecommunications services. Deregulated telecommunications services are defined as services that are not regulated by the Canadian Radio-Television and Telecommunications Commission (CRTC). Applies to services for procurement of electricity or natural gas. Services include the deregulated portion, at a rate or in an amount no greater than those normally charged.
		\$100,000,000	n/a	
	Shared Services Canada	\$300,000,000*	n/a	
	National Defence	\$20,000,000	n/a	
	National Research Council Canada	\$20,000,000	n/a	
	All other departments and agencies	\$5,000,000	n/a	

Schedule 4: method of supply

Any contracting authority may enter into a goods or a service contract, regardless of the amount, if the contract derives from a standing offer already approved by the Treasury Board.

Use of Public Services and Procurement Canada standing offers for commodity classes listed below are mandatory. Public Services and Procurement Canada will publish the list of standing offers that are available for each commodity and will update this list annually.

Schedule 4: commodities for which standing offers are mandatory

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Class	Description
D	Information processing and related telecom services
R	Professional, administrative and management support services
N23	Ground effect vehicles, motor vehicles, trailers and cycles
N58	Telecommunications equipment and accessories
N70	General-purpose automatic data processing equipment (including firmware), software, supplies and support equipment
N71	Furniture
N74	Office machines, text processing systems and visible recording equipment
N75	Office supplies and devices
N84	Clothing, accessories and insignia
N91	Fuels, lubricants, oils and waxes

Schedule 5: former public servants

A competitive service contract or contractual arrangement with a former public servant is subject to the minister's basic limits, including all applicable taxes, fees and amendments.

The department's responsible minister must provide contract approval prior to entering into a non-competitive service contract with a former public servant:

- in receipt of a pension under the [Public Service Superannuation Act \(PSSA\)](#) when the estimated total contract exceeds \$200,000; or
- in receipt of a pension under the PSSA, when the annualized rate of remuneration exceeds \$200,000 and the contract term exceeds ninety (90) working days; or
- if they are in receipt of a lump sum payment when the total fees payable will exceed \$5,000 during the lump sum payment period as provided in the [Workforce Reduction Directive \(WRD\)](#) made pursuant to the [Public Sector Compensation Act](#), and former members of the Armed Forces and the Royal Canadian Mounted Police in receipt of lump sum payments through corresponding force reduction programs, regardless of whether one or more than one contract is involved.

Part II: exceptional contracting limits

In addition to the requirements of Part I: basic contracting limits, Treasury Board approval is required when the minister (or their delegated authority) enters into a contract or contractual arrangement above specified-limit departments and agencies listed below, including all applicable taxes, fees and amendments, unless otherwise indicated.

These exceptional limits must be used in conjunction with mandatory Public Services and Procurement Canada instruments as a first consideration to the extent practicable.

Agriculture and Agri-Food Canada

Related to the *Prairie Farm Rehabilitation Act*:

- competitive architectural and engineering services contract up to \$600,000
- non-competitive architectural and engineering services contract related to buildings or public works up to \$100,000

Canadian Food Inspection Agency

- Competitive construction contract up to \$1,500,000
- Architectural and engineering services contract up to \$150,000

Canadian Security Intelligence Service

Competitive and non-competitive goods or service contract up to an amount approved by the Treasury Board to support sensitive operations

Correctional Service Canada

Non-competitive contract for provision of educational and health care services for inmates, and for the provision of residential and non-residential after-care services to conditionally released offenders up to \$600,000

Up to October 26, 2022:

- Competitive health and social services contract up to \$6,000,000
- Non-competitive contractual arrangements with governmental and quasi-governmental entities, such as hospitals, universities and colleges, up to \$5,000,000
- Agreements for the statutory authority as per section 16 and section 81 of the *Corrections and Conditional Release Act* for which the Correctional Service of Canada has, and where the total value over five years does not exceed \$25,000,000

Crown-Indigenous Relations and Northern Affairs Canada

Exceptional limits previously approved for the Minister responsible for Indigenous and Northern Affairs Canada:

Until July 31, 2021:

- Non-competitive contract for the services of federal negotiators/representatives for claims, litigation and self-government negotiations up to \$2,000,000 per contract with:
 - entry-level limit up to \$550,000
 - amendments up to \$500,000 in a 12-month period, and
 - professional services up to \$300,000
- Non-competitive contract for the services of Crown deponents and expert witnesses for litigation up to \$800,000
- Non-competitive contract for the services of Crown deponents and expert witnesses for litigation who are former federal public servants in receipt of a pension, up to \$225,000
- Amend contracts with federal negotiators/representatives that were entered into under the exceptional contracting limits to extend the period of the explicit indemnification provisions

Indigenous Services Canada

Exceptional limit previously approved for the Minister responsible for National Health and Welfare:

- Until July 31, 2021, non-competitive health care services contract to Canadian Indigenous peoples and Inuit up to \$3,000,000

Environment and Climate Change Canada

Non-competitive service contract for research and technology development in water and waste pollution control in support of federal programs up to \$750,000

Fisheries and Oceans Canada

- Competitive architectural and engineering services contract for the salmonid fish hatchery facilities up to \$600,000
- Non-competitive architectural and engineering services contract for the salmonid fish hatchery facilities up to \$100,000
- Until March 31, 2023, for the Small Craft Harbour program:
 - competitive construction contract up to \$2,000,000
 - competitive architectural and engineering services contract up to \$350,000

Global Affairs Canada

Exceptional limits previously approved for the minister responsible for international development:

- Service contract for an international development assistance program or project, or to approve a recipient country's entry into such a contract, up to:
 - \$30,000,000 for a competitive service contract
 - \$200,000 for a non-competitive service contract
- Increase the amount payable under such a service contract for an international development assistance program or project by a total not exceeding:
 - \$2,000,000 for a competitive contract
 - \$100,000 for a non-competitive contract
- When the amount payable under such a service contract has been initially approved by the Treasury Board or has been increased with the approval of the Treasury Board, amend or further amend the contract if the cumulative value of the amendments payable subsequent to each Treasury Board approval does not exceed:
 - \$2,000,000 for a competitive contract
 - \$1,000,000 for a non-competitive contract
- Non-competitive service contract for an international development assistance program or project, or to approve a recipient country's entry into such a contract, up to \$200,000
- Competitive construction contract for an international development assistance program or project, or to approve a recipient country's entry into such a contract, up to \$30,000,000

- Increase the amount payable under such a competitive construction contract for an international development assistance program or project by \$2,000,000
- When the amount payable under such a competitive construction contract has been initially approved by the Treasury Board or has been increased with the approval of the Treasury Board, amend or further amend the contract if the cumulative value of the amendments payable subsequent to each Treasury Board approval does not exceed \$2,000,000
- Approve a recipient country's entry into a goods contract, excluding a fertilizer contract, up to:
 - \$8,000,000 for a competitive contract
 - \$2,000,000 for a non-competitive contract
- Increase the amounts payable under a goods contract, excluding a fertilizer contract, let by a recipient country by:
 - \$4,000,000 for a competitive contract
 - \$1,000,000 for a non-competitive contract
- Approve a recipient country's entry into a fertilizer contract up to \$6,000,000 if:
 - bids are solicited for each purchase and the amounts bid are considered reasonable under prevailing market conditions; or
 - the lowest bid is accepted where more than one is received; or
 - if only one bid is received, the bidder certifies that a most favoured customer price is being offered
- When the amount payable under a goods contract let by a recipient country has been initially approved by the Treasury Board or has been increased with the approval of the Treasury Board, approve amendments to the contract if the cumulative value of the amendments payable subsequent to each Treasury Board approval does not exceed:
 - \$2,000,000 for a competitive contract
 - \$1,000,000 for a non-competitive contract

Exceptional limits previously approved for the minister responsible for foreign affairs, trade and development:

- Competitive contracts for the design and construction of facilities up to:
 - \$1,500,000 for staff quarters
 - \$4,500,000 for an official residence
 - \$15,000,000 for a chancery
 - \$15,000,000 for multiple-unit facilities
- Non-competitive contract for architectural and engineering services up to \$150,000
- Competitive contract for architectural and engineering services using the traditional competitive method up to \$1,000,000
- Increase the amount payable under a competitive contract for architectural and engineering services, when the original contract was entered into as a result of the traditional competitive

method being used, by the greater of \$250,000 or 25% of the original contract amount (not to exceed \$1,000,000)

- Enter into a competitive contract for architectural and engineering services using the electronic bidding method up to \$2,000,000
- Increase the amount payable under a competitive contract for architectural and engineering services, when the original contract was entered into as a result of the electronic bidding method being used, by the greater of \$1,000,000 or 25% of the original contract amount (not to exceed \$2,000,000)
- Until October 19, 2022, competitive security service contracts for the purpose of Canadian missions abroad up to \$10,000,000
- Non-competitive contracts for services up to \$600,000 and \$300,000 respectively in support of an official visit to a foreign country by the Prime Minister of Canada and/or the Governor General of Canada. These limits apply only to the minister and departmental officials with delegated authority in the chief financial officer's branch.

Library and Archives Canada

Non-competitive goods contract for historical material, books and other publications up to \$150,000

National Defence

- Acquire logistics support, supplies and services from states allied or associated with Canada under a mutual logistic support arrangement during the execution of combined exercises, training, deployments, operations, or other cooperative efforts, provided all related transactions are executed within the approved resource envelope for the activity being supported and subject to a request and authorization from the minister of Public Services and Procurement Canada when required. Logistic support, supplies and services are specifically defined as food, water billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, port and airport services, and the temporary use of general-purpose vehicles and other non-lethal items of military equipment to the extent that such use is permitted under the national laws of the signatories
- Non-competitive contractual arrangements for test and evaluation services with allied states up to \$10,000,000
- From July 1, 2017, to June 30, 2022, competitive contracts up to \$10,000,000, and non-competitive contracts up to \$5,000,000, for the transportation of personnel and materiel
- From July 1, 2017, to June 30, 2022, non-competitive contractual arrangements with the NATO Support and Procurement Agency up to \$10,000,000 to provide transportation services to the Canadian Armed Forces for certain non-domestic requirements
- Non-competitive service contract for the provision of flying and glider training services for air cadets up to \$3,000,000
- Competitive and non-competitive goods and services contract or contractual arrangement up to an amount that has been approved by the Treasury Board in support of sensitive operations

National Film Board

Non-competitive service contract for producer services in the making of films up to \$500,000

National Research Council Canada

- Contracts for publications, renewals and back sets
- Competitive construction contracts up to \$6,000,000 and amendments to such contracts that are over \$2,000,000 by up to 10% of the contract amount
- Competitive architectural and engineering services contract up to \$517,500

Office of the Superintendent of Financial Institutions Canada

Non-competitive service contract, for the purposes of urgent and highly confidential investigations of financial institutions as determined by the minister up to \$225,000

Parks Canada

- Until March 31, 2023, to be applied to all Parks Canada funding sources, in support of capital investments
 - competitive construction contracts up to \$15,000,000
 - competitive architectural and engineering services contracts up to \$3,750,000
- Non-competitive architectural and engineering services contracts up to \$75,000

Public Services and Procurement Canada

- Goods agreement to supply edible agricultural products as part of a foreign aid program up to \$10,000,000 under the following conditions:
 - bids are reasonable under prevailing market conditions, the lowest valid bid is accepted or when necessary to obtain the tonnage demanded, successive lowest valid bids are accepted; or
 - when bids include Freight Aboard Ship (FAS) multiple ports, the lowest valid bid or, when necessary to obtain the tonnage demanded, successive lowest valid bids that result in the lowest total cost to the recipient country are accepted
- Competitive and non-competitive agreement up to \$5,000,000 to transport by ocean-going vessel any goods for Global Affairs Canada under the following conditions:
 - the price offered is considered by the contracting authority to be reasonable under prevailing market conditions; and
 - the lowest valid bid is accepted or, if it is necessary to accept more than one bid to accommodate the quantity of goods to be shipped, successive lowest valid bids are accepted
- Services contract for repair and overhaul of military equipment up to \$50,000,000
- Goods contract for ammunition under the Munitions Supply Program up to \$50,000,000
- Goods and/or services contract under the United States Foreign Military Sales program up to \$25,000,000
- Goods contract for bulk fuel up to \$10,000,000

- Contracts with the government of the United States containing that government's usual terms dealing with indemnity and liability, subject to the limits of the Treasury Board *Contracts Directive*
- Printing and related services are defined as printing, integrated forms management, warehousing and distribution. The Minister of Public Services and Procurement Canada is responsible for printing and related services. The minister has delegated some authority to contract for printing and related services to other ministers responsible for departments and agencies
- Contract with the two selected shipyards for goods and services associated with large ships projects under the National Shipbuilding Strategy up to \$115,000,000

Royal Canadian Mounted Police

- Competitive construction contract: up to \$11,500,000
- Competitive architectural and engineering contract up to \$1,850,000
- Non-competitive architectural and engineering services contract up to \$150,000
- For housing and detachment projects:
 - competitive construction contract up to \$23,000,000
 - competitive architectural and engineering services contract up to \$3,700,000
- Competitive and non-competitive goods and services contracts or arrangements up to an amount approved by the Treasury Board in support of sensitive operations

Shared Services Canada

Until March 31, 2025, the Minister responsible for Shared Services Canada may enter into and amend non-competitive contracts for up to \$22.5 million to support IT operations for the GC where IP rights of the supplier prevent the contract from being competed.

Part III: Emergency Contracting Limit

1. Notwithstanding the contracting limits provided in Part I and Part II of this Directive, any contracting authority may enter into and amend a contract up to a total value of \$1,000,000 (including amendments and all applicable taxes including GST or HST) in response to a pressing emergency on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of the work. Departments are encouraged to use this expanded contracting authority to enter into lower dollar value contracts to address the emergency and then, if necessary, to amend them once the scope of the work involved is better defined.
2. Notwithstanding Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, the Minister responsible for the Foreign Affairs, Trade and Development may enter into a contract for an international development assistance program or project to a total value of \$4,000,000 (including starter contracts) in response to a pressing emergency on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of the work.

3. An emergency contracting report should include the following:
 - a. detailed information about the circumstances of the emergency situation;
 - b. the type and total value of the awarded contract;
 - c. the reason(s) why the bidding requirements were not practical or permissible;
 - d. the department or agency's delegated contracting authority level at which the emergency contract entry was approved.
4. Notwithstanding, Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, the Minister of National Defence may enter into non-competitive contracts up to a total value of \$5,000,000 in response to a pressing emergencies for fuel, food, water and transportation services during urgent deployments of Canadian Forces units, under authorized operational orders, in situations where there will be significant human and/or financial risk on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of work.
5. Notwithstanding Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, the Minister of Public Works and Government Services may enter into a non-competitive contract up to a total value of \$15,000,000 in response to pressing emergencies by departments where there will be significant human and/or financial risks on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of work.
6. Notwithstanding Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, the Minister of Fisheries and Oceans may enter into non-competitive contracts up to a total value of \$10,000,000 in response to pressing emergencies caused by oil spills, in situations where there will be significant human and/or financial risk, on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of work.
7. Notwithstanding Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, the Minister of Foreign Affairs may enter into non-competitive services contracts related to Chanceries up to a total value of \$15,000,000 in response to a pressing emergency and/or national security related threats to Canadian missions abroad and where there is significant human and/or financial risk, on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of work.
8. Notwithstanding Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, the Minister responsible for Shared Services Canada may enter into a non-competitive contract up to a total value of \$15,000,000 in response to pressing emergencies by departments where there will be significant human and/or financial risks on condition that a report be sent to the Treasury Board Secretariat within 60 calendar days of the authorization or beginning of work.
9. Notwithstanding Section 1 of this Part and the contracting limits provided in Part I and Part II of this Directive, until June 13, 2022, the Minister responsible for the Office of the Superintendent of Financial Institutions Canada may enter into and amend a non-competitive services contract up to a total value of \$4,000,000 in response to pressing emergencies for investigations and monitoring of financial institutions, or in the context of taking control of a financial institution, to act as an agent of the Superintendent, on the condition that a report be sent to the Treasury Board of Canada Secretariat within 60 calendar days of the authorization or beginning of work and again within 60 days after any amendments to the contract.

10. The emergency contracting authorities referred to in Sections 4, 5, 6, 7, 8 and 9 can only be used if all of the following criteria can be met:
 - a. the Minister invokes the National Security or Extreme Urgency provisions of the applicable trade agreements;
 - b. the requirement cannot be satisfied by normal contracting procedures due to the urgency of the situation; and
 - c. the applicable departmental Minister approves the use of these special authorities.

Appendix D – The Federal Contractors Program for Employment Equity

Published July 1, 2003. The contents of this appendix are mandatory since they represent a decision of cabinet. This appendix was amended May 2013.

Introduction

The primary objective of contracts is to receive the deliverables contracted for, and to be able to use those deliverables for Government of Canada activities. The Government of Canada's Contracting Policy further states that officials are to achieve best value for money and to seek the optimal balance of benefits to the Crown and the Canadian people through its purchases. As part of this commitment, the Government of Canada has made specific provisions for social and economic development objectives to be pursued through procurement. One of the socio-economic objectives pursued through contracting is employment equity. The Federal Contractors Program (FCP) for Employment Equity sets out a framework for meeting these objectives.

Background – The Federal Contractors Program for Employment Equity

The Federal Contractors Program for Employment Equity was implemented October 1, 1986 following the proclamation of the *Employment Equity Act* (the Act) on August 13, 1986. The Act itself covered private sector federally regulated enterprises with 100 or more employees and required them to implement employment equity. The FCP targets non federally regulated federal contractors with a resident workforce in Canada of 100 or more employees which received federal contracts for goods and services of \$1,000,000 or more.

The Act was amended in 1995 to strengthen various provisions and to provide measures to ensure compliance with employment equity requirements; it also extended the obligation to implement employment equity to federal departments and agencies. The Act states it is the responsibility of the Minister of Labour to "administer the Federal Contractors Program for Employment Equity." This legislative mention clearly authorizes the Minister of Labour to develop procedures necessary to administer the Program and ensure that contractors comply with their employment equity obligations.

There are a number of obligations incumbent on organizations subject to the FCP in order to achieve equality in the workplace. Such organizations must collect and maintain data on all employees, analyze the representation of each of the designated groups in all occupational groups, compare this representation with the external representation and identify under representation of designated groups.

Based on this information, organizations must take appropriate actions to identify and remove all barriers impeding designated groups and develop achievable and realistic short and long term goals to decrease gaps in representation.

For their part, federal contractors with a resident workforce of 100 or more employees (as defined in the *Employment Equity Regulations*) which bid on goods and services contracts of \$1,000,000 or more must be required to enter into a separate agreement to implement employment equity. Once a supplier is awarded a contract of \$1,000,000 or more (including all applicable taxes), the organization is then required to honour its agreement to implement employment equity as an on-going obligation, and not simply during the life of the contract. Contractors subject to the FCP are required to provide the Labour Program of Employment and Social Development Canada (ESDC-Labour) with information on the representation of women, Aboriginal peoples, persons with disabilities and members of visible minorities who are permanently employed. ESDC-Labour verifies that all federal contractors are meeting their obligations through a review and assessment of the contractor's workforce analysis on representation as well as its goals and its progress on closing the gaps. Contractors which fail to meet their commitment may lose the right to receive further federal contracts for goods and services.

1. General

1.1 Departments and agencies (listed at Schedules I, I.1 and II of the *Financial Administration Act*) must follow practices that will ensure fairness and equality to designated groups in the administration of all contracts. More specifically, the FCP, administered by ESDC-Labour is intended to ensure that suppliers to the federal government attain a fair and representative work force.

1.2 Contractors must identify and remove barriers to the selection, hiring, promotion and training of women, Aboriginal peoples, persons with disabilities and members of visible minorities. Contractors must also take steps to help increase the participation of these groups at all levels and in all areas of the work force as is most appropriate for that contractor.

1.3 The FCP applies to:

- a. Canadian suppliers and foreign suppliers with a resident work force in Canada of 100 or more permanent full-time and/or permanent part-time employees.
- b. Goods and services contracts/standing offer agreements/supply arrangements valued at \$1,000,000 (including all applicable taxes) or more (referred to as "contracts" throughout this document) covered by the *Government Contracts Regulations* (GCRs) and the Contracting Policy.
- c. All good and services contracts for solicitation of bids for contractors declared "ineligible".

1.4 This Program does not apply to contracts for the purchase or lease of real property or to construction contracts.

2. General Procedures for soliciting bids or awarding contracts estimated at \$1,000,000 or more

2.1 Contracting authorities soliciting bids or awarding a goods contract or a service contract valued at \$1,000,000 (including all applicable taxes) and above must:

- a. indicate to bidders the FCP requirements;

- b. request and obtain from the bidder/supplier, as appropriate, the necessary evidence of compliance with the FCP, namely a valid and current Agreement to Implement Employment Equity duly signed by an authorized executive of the company or a valid Agreement to Implement Employment Equity number issued by ESDC-Labour;

2.2 Contracting authorities soliciting bids or awarding a goods contract or a service contract valued at \$1,000,000 (including all applicable taxes) and above should:

- a. verify the accuracy of the Agreement to Implement Employment Equity number by comparing it with the number listed for that organization/bidder in the [FCP List of Certified Employers](#). ESDC-Labour makes this information available on Publiservice.
- b. contact the Director of Workplace Equity or seek clarification from the bidder if the Agreement to Implement Employment Equity number cited by the bidder does not match the Agreement to Implement Employment Equity number listed on the [FCP List of Certified Employers](#).
- c. confirm whether the FCP applies to suppliers by consulting ESDC-Labour's internet site or by contacting ESDC-Labour, or by consulting the Act. A supplier is not subject to the FCP if it is covered under the Act and therefore falls under federal jurisdiction.
- d. verify eligibility of bidders recommended for contract award by ensuring they are not on the [FCP Limited Eligibility to Bid](#) list, which is available on Publiservice. A supplier declared ineligible by ESDC-Labour and whose name appears against the [FCP Limited Eligibility to Bid](#) list is ineligible to do business or receive any federal contracts for goods and services.
- e. provide bidders with a standard Agreement to Implement Employment Equity, available from ESDC-Labour.
- f. obtain approval from senior management before awarding a contract to an ineligible supplier if the supplier is the only supplier who can perform the work. In addition, the contracting department should inform Workplace Equity at ESDC-Labour who would then attempt to obtain a commitment from the supplier to seek re-instatement in the FCP (see section 6.5 below).

3. Reporting and Monitoring

3.1 Departments/Agencies will forward any signed Agreement to Implement Employment Equity or Agreement number for each contract valued at \$1,000,000 (including all applicable taxes) or more within 30 days of contract award to:

Director, Workplace Equity Programs
Employment and Social Development Canada – Labour Branch
165 Hôtel de Ville
Phase II, 10th Floor
Gatineau, Quebec
K1A 0J2

Note that all signed Agreements will be numbered by ESDC-Labour for ease of reference.

3.2 ESDC-Labour will regularly evaluate the program and may request from contracting departments/agencies information essential to program monitoring.

3.3 Submissions seeking Treasury Board approval of contracts should address compliance with the FCP.

4. Compliance Assessment

4.1 ESDC-Labour periodically reviews success in closing gaps in the representation of the designated groups in the contractor's workforce:

- a. If the results are satisfactory, ESDC-Labour shall so inform the contractor.
- b. If the contractor's efforts or progress-to-date are not satisfactory, ESDC-Labour shall so inform the contractor. The contractor must then initiate appropriate corrective action within a reasonable time period. If, at the end of that period, results are unsatisfactory, the assessment officer may find the contractor to be in non-compliance.
- c. Contractors found to be non-compliant have the right to appeal to the Minister of Labour. In that case, an independent assessor shall be appointed to examine the review and any information presented by the contractor making the appeal. The independent assessor will form conclusions and advise the Minister accordingly.
- d. The Minister of Labour shall communicate the assessor's findings to the Minister of the department/agency that awarded the contract if the assessor's report confirms the finding of non-compliance and shall take appropriate action which may include advising the contractor that it is ineligible for future goods contracts or service contracts.

5. Sanctions

5.1 ESDC-Labour will place the name of the contractor found to be non-compliant on the [FCP Limited Eligibility to Bid](#) list and its Agreement to Implement Employment Equity numbers will become invalid. The contractor should not be considered for any further federal contracts for goods and services. In addition, the contractor will be placed on a public list of non-compliant contractors maintained on the ESDC-Labour Internet site.

5.2 Contractors withdrawing from the FCP or withdrawing from the FCP during a compliance assessment and prior to a finding of non-compliance accept the same sanction as that for being found in non-compliance (see 4.1 above).

5.3 Contractors which are able to demonstrate to the satisfaction of ESDC-Labour that its workforce has decreased to less than 100 permanent employees will be allowed to withdraw from FCP without penalty.

5.4 Re-instatement: The ineligible contractor may be re-instated by demonstrating to the satisfaction of a review officer of ESDC-Labour that the organization is in compliance with the FCP.

6. Roles and responsibilities

6.1 Contractors withdrawing from the Federal Contractors Program accept the same sanction as that for being found in non-compliance.

6.2 ESDC-Labour maintains and regularly updates a federal inventory of all completed Agreements to Implement Employment Equity in its [FCP List of Certified Employers](#). This list provides the names of contractors and their assigned Agreement numbers. This information is made available to all contracting authorities on Publiservice.

6.3 ESDC-Labour maintains an inventory of contractors - the [FCP Limited Eligibility to Bid](#) list – which are not entitled to receive federal goods and services contracts by reason either of having been found in

non-compliance following an ESDC-Labour compliance assessment or having withdrawn from the FCP. ESDC-Labour ensures that this inventory is kept current and made available to all contracting authorities on Publiservice.

6.4 ESDC-Labour offers advice and assistance to contractors in implementing employment equity.

6.5 ESDC-Labour offers information and advice to government officials regarding the purpose and functioning of the FCP.

6.6 ESDC-Labour requires certified employers to indicate the number of employees on the Agreement to Implement Employment Equity. ESDC-Labour also requires contractors to submit information on the representation of the designated groups in the employer's workforce as well as their short and long term goals.

6.7 ESDC-Labour will periodically produce consolidated reports on the situation of designated groups in the workforce under the FCP, on compliance efforts by contractors and on the contracting activities of the departments/agencies.

6.8 ESDC-Labour will collaborate with contracting authorities to ensure that contractors found in non-compliance or having withdrawn from the FCP do not receive federal contracts for goods and services as set out in the GCRs.

Roles and responsibilities of contracting authorities

6.9 Contracting authorities are responsible for ensuring that solicitations issued to bidders contain appropriate documentation on the FCP and ensuring that contractors provide evidence of their compliance with the FCP prior to awarding any contract (see section 2 of this Appendix).

6.10 On request, contracting authorities should provide information on contracts to enable ESDC-Labour to administer and monitor the FCP.

Appendix E – Federal Contracts for Building Services in the Province of Ontario

Published September 7, 1997.

1. Federal contracting authorities are required to observe the intent and follow the provisions of the Ontario legislation concerning the protection of jobs and the level of benefits of workers who work primarily at one specific site to provide building cleaning, food and security services.
2. Upon request by the building owner or manager, an employer providing the specified services shall provide the following information as set out in Ontario Regulation 138/96:
 - a. the name, address and telephone number of each employee;
 - b. the classification, wage rate, benefits, average weekly hours and initial hire date of each employee;
 - c. the number of weeks worked in the preceding 26 weeks or a longer period if services were temporarily discounted or an employee was on pregnancy or parental leave; and
 - d. a statement indicating which employees were not primarily employed at the premises during the preceding 13 weeks or during an employee's most recent 13 weeks of active employment.

3. Building owners or managers are required to give this information, excluding the names, addresses and telephone numbers of employees, to prospective bidders upon request.
4. Building owners or managers must provide the full list, including names, addresses and telephone numbers, upon the request of the successful bidder.
5. Such information shall be used only for the purposes of complying with the *Employment Standards Act* (ESA) and shall not be disclosed except as authorized by the Act.
6. The following are standard clauses drafted in accordance with the amended *Ontario Employment Standards Act* and may be used by departments when contracting for the services affected by the legislation. However, due to the specialized needs of individual departments, the Treasury Board Secretariat advises that departments seek guidance from their legal advisors before incorporating any of these clauses into their contracts.

Additional Conditions to the General Conditions

1. The requirements of Part II "General Conditions", section 13.1 of the *Employment Standards Act* of the Province of Ontario, apply to employers who, on or after October 31, 1995, begin to provide building services such as cleaning, catering or security at the premises, replacing another employer who was providing those services.
 - a. Where a successor employer (contractors) hires an employee of the previous employer who provided these services at the premises, the employee will be deemed to have continuous service, and all employment with the previous employer shall be counted for purposes of ESA entitlements for public holidays, vacations, pregnancy and parental leave, and termination and severance pay.
 - b. If the successor employer (contractors) does not hire an employee of the previous employer who provided services at the premises, the successor employer must comply with Part XIV of the Act (termination and severance provisions), subject to the following exemption in Ontario Regulation 138/96:
 - successor employers (contractors) do not have to provide termination and severance to employees who do not have a substantial connection to the site. This includes the following:
 - employees whose duties were not primarily at the premises during the 13 weeks before the new contractor arrived;
 - employees who are temporarily away and whose duties were not primarily at the premises during the last 13 weeks when they worked; and,
 - employees who have not worked at the premises for at least 13 of 26 weeks before the successor takes over the contract.
 - c. If an employee was temporarily suspended or on pregnancy or parental leave, the 26 week period is extend by the amount of the time the employee was away.
 - successor employers (contractors) do not have to provide termination and severance pay to employees who refuse a reasonable offer of employment. An employee's terms and

conditions of employment with the previous employer is considered when determining whether or not the offer is reasonable.

- d. If the successor employer (contractors) hires an employee of the previous employer, the previous employer shall pay the employee any accrued vacation pay.

Appendix F – Official Languages

Published May 1, 1996. This Appendix contains mandatory requirements.

All references in this Appendix to the Act or to the Regulations are to the *Official Languages Act* and *Official Languages (Communications with and Services to the Public) Regulations*.

Objective

To ensure that the contracting process complies with the *Official Languages Act* and Regulations, this Appendix provides official languages parameters for all federal departments and agencies that are subject to the *Government Contracts Regulations (contracting authorities)*. Other federal institutions are required to comply with the general principles of this Appendix.

Statement

1. Contractors and prospective contractors must be dealt with in the official language of their choice as required by the Act and Regulations. From the beginning of the contracting process, contractors should have access to the information related to this process in the official language of their choice.

Note:

In accordance with section 11 of the *Official Languages Act*, federal institutions must meet any requirements in a federal act, that require them to publish notices, advertisements and other matters in both official languages.

Official Languages Obligations

2. When bid solicitations are national in scope or originate from an office having the obligation to serve the public in both official languages pursuant to the Act and Regulations, **all regular or standardized documents** must be provided in both official languages (whether through the media or by electronic communications systems). This requirement also applies to public notices, statements of terms and conditions, basic forms, bid solicitations, standards, purchase descriptions and contracts.

Note:

In this policy, standards are those produced by a federal institution, or by a private or public standards-writing organization, if they are available in both official languages at the time the contracting process begins.

3. Where **non-standardized documents**, such as specifications, are used, it is up to the federal institution, i.e. the contracting authority (or the client department responsible for the preparation of the

specifications when a common service organization handles the contracting process only) to determine if these documents must be available in both official languages to provide information to contractors in the language of their choice, in conformity with the *Official Languages Act* and Regulations. Thus, the non-standardized or specific documents may be provided in only one official language when the federal institution determines and can substantiate, based on relevant information regarding their public and the marketplace, that they will be requested in that language only. If it is determined later that a significant demand exists for such documents in the other official language, the federal institution must take the necessary measures to make the documents available in the other official language. In some cases, where the specifications do not originate in Canada, they are not translated.

4. When the bidding is not national in scope or when an office of a federal institution does not have obligations under the Act and Regulations, the contracting documents may be prepared only in the official language of the majority of the population concerned. This also applies to subsequent operations.

Responsibilities

5. The contracting authority (or the client department responsible for the preparation of the specifications when a common service organization handles the contracting process only) is responsible for setting out the requirements, including those on official languages, and for the quality of the language of their statements of terms and conditions, and specifications. The institution is also responsible for **actively** offering the related services to the public in Canada in the official language of its choice, as required by the Act and Regulations.

6. The federal institution must include the appropriate conditions in its bid solicitation documents and its contracts to ensure that, when the public comprises members of both official language communities, its contractors observe the requirements of the Act and Regulations on service to the public and, where applicable, of Treasury Board policies. For example:

- Any contractor who carries out work **on behalf** of a federal institution (see section 25 of the Act) in a location where the federal institution would have to provide services or communications to the public, including supplemental background documentation such as brochures, operation and maintenance instructions, parts lists in both official languages, must also do so in both official languages.
- When the site of a project is in a location where a significant demand exists for services in English and French under the Act and Regulations, the signs must be erected in both official languages.

7. When a **common service organization** carries out procurement for goods or services, the client federal institution must submit, where necessary, contractual documents, including its requisition, specifications, standards and purchase descriptions in both official languages. If it does not do so, the federal institution must be prepared to show that its approach is consistent with the Act and Regulations.

Appendix G – Reserved

Reserved.

Appendix H – Approval of contractual proposals

Published January 2002. The contents of this appendix contain both mandatory requirements as well as guidelines.

1. Introduction

The information required in the contract approval process should be a matter of record in all contract files, as well as in Treasury Board submissions, to:

- a. provide a clear audit trail;
- b. provide management with sufficient information to make an informed decision; and
- c. avoid delays in the approval process while clarifications and additional information are sought.

There are three types of contract submissions, viz, entering into a contract, amending a contract and ratifying a contract or amendment. The Treasury Board Submissions Guide provides general information on the format, structure and processing of submissions to the Treasury Board.

2. Required information

2.1 Proposal

The proposal and cost sections in a submission are the most important elements since the text of the proposal and details of the cost must reflect what the Treasury Board Ministers or the contract authority are to approve. The proposal must therefore provide a brief, descriptive narrative, in layman's terms, of the authorities sought. The proposal should clearly indicate the type of submission, i.e., to enter or to amend a contract; the name and address of the contractor and a brief description of the work, including the name of the project and the location. In a goods contract submission, a statement explaining what the goods are for and where they will be used is required. In a multi-year contract, the proposed duration of the contract must be stated.

2.2 Cost

In the cost section, the amount requested and the source of funds (vote number, revolving funds, O and M, capital, etc.) must be stated. The name of the client department funding the proposal, if any, must be included. In the case of an amendment, the additional amount requested plus the revised contract total must be stated. A cash flow expenditure forecast is also required.

2.3 Selection of contractor

When the selection is based on competitive bidding, the names of the bidders, the location of the work and the price bid by each bidder are to be included in the submission. If the selection is based on other criteria such as best value, details of the evaluation system and supporting information in terms of technical evaluation and price is required. When the selection of the contractor does not conform to the definition of a competitive contract, the contract is to be treated as anon-competitive contract and the lower authority levels apply.

2.4 Technical evaluation

A summary of any technical evaluation should be provided normally as an annex to the submission.

2.5 Negotiated prices

When the price was derived by negotiation, a complete price breakdown should be provided. A statement that the price is reasonable should cite comparisons, price certifications, profit level, catalogue price, historical prices and the like.

2.6 Amendments to contracts

A full explanation of why costs will exceed the original contract level must be provided when requesting approval to increase the value of a contract (e.g., additional client requirement, underestimation of cost, additional work not included in the original contract). Also a table or resume of the previous approvals and departmental amendments, work done, work paid for, descriptions of the original work and details of the revised contract must be provided.

2.7 Method and basis of payment

Pricing and payment terms should be included. Indicate whether the contract is a firm price contract, unit price contract or a target price contract, etc. If there is a penalty for late delivery, this should be reported.

2.8 Terms of reference

A brief description of the main elements of work to be carried out by the contractor is required.

2.9 Advance payments

If advance payments are to be made, the request for authority to make them should be included in the proposal section. The amount, time and reason for the request, and the proposed method and time of any recovery of the advance should be provided in the remarks section.

2.10 Remarks

The text of the remarks section of a submission or contractual proposal should include the following, in numbered paragraphs:

- a. Full identification of the work being contracted, including its relationship to a specific program and to other associated contracts so that the full context of the work is clearly understood. If it is foreseen, indicate that a further phase may be required.
- b. Other relevant authorities, including program approval reference, Order-in-Council authority, and related contract approval references (Treasury Board or departmental).
- c. When applicable, an explicit statement of the urgency of a submission, including such information as expiry date of the received bids, effect of delay on client's operations or project coordination, etc.
- d. Cost control mechanisms, if applicable, including cost-reimbursable contracts, fixed-time-rate contracts, and contracts in which progress payments or milestone payments are made.
- e. The delivery schedule or project completion date, along with an assessment of the implications for program success. Also indicate the proposed start date, which should factor in the

- processing time within the department and Treasury Board Secretariat.
- f. Reference to any special policies, guidelines or socio-economic factors that have a bearing on the proposed contract.
 - g. In cases of cost overrun (a) under-estimating the cost of the work to be performed or (b) for work that was to be done but not included in the terms of reference (as distinct from additional work resulting from client requirements or similar reasons) provide a detailed explanation of the reasons for the overrun (See appendix 2-1, Project Approval and Chapter 2-2, Project Management of the Capital Plans, Projects and Procurement policies).
 - h. Whether there was a Procurement Review Committee (P.R.C.) and, if so, the results.
 - i. Whether the procurement is subject to the trade agreements, the *North American Free Trade Agreement*, the *World Trade Organization – Agreement on Government Procurement*, *Agreement Between the Government of the Republic of Korea and the Government of Canada on the Procurement of Telecommunications Equipment* and the *Agreement on Internal Trade* and, if applicable, quoting the articles for exceptions and derogations.
 - j. An outline of the extent of Canadian content.
 - k. Whether the contractor has provided a certificate of commitment to implement employment equity.
 - l. A project management certification, where applicable.
 - m. The departmental contact, including a telephone number.
 - n. Any other information of special interest. Information pertaining to any situation in the contracting process which is not, or may not be, in accordance with the *Government Contracts Regulations* or the contracting policy of the government should be explained.

3. Format requirements for submission to Treasury Board

The Treasury Board Secretariat should have copies of all supporting documents referred to in the submission. In some cases, a summary of the essential details of a document may suffice. The Treasury Board Submissions Guide provides general information on the format, structure and processing of submissions to the Treasury Board. It also provides [guidance](#) on some of the content requirements. For complex, urgent or sensitive issues, discussions with the Secretariat analyst, prior to finalization of the submission, may shorten the time required for approval.

4. Evaluation of submissions

The Treasury Board Secretariat will carry out continuing reviews of submissions to determine the adequacy of these instructions and the level of compliance. If necessary, departments or agencies will be informed of any deficiencies. Contracting authorities are responsible for monitoring and evaluating the application of these instructions within their own departments and agencies.

Appendix I – Temporary help services

Revised June 9, 2003. The contents of this appendix contain both mandatory requirements as well as guidelines.

1. Background

1.1 This Appendix supplements the provisions of Section 4., Policy requirements, and article 4.2, Related requirements and applies to all categories of contracted services that may be provided by temporary help firms. The services provided by temporary help firms are traditionally used against vacancies during staffing action, when a public servant is absent for a short period, or when there is a temporary work load increase for which insufficient staff is available. Public Works and Government Services Canada is responsible for qualifying firms and negotiating basic rates under master standing offers. Under this arrangement, the Crown receives a consistent product at the lowest market rates, and private sector firms are satisfied.

1.2 Contracting authorities subject to the contracting policies and guidelines of the Treasury Board enter into separate contracts with temporary help firms each time a call-up is made against a standing offer for the supply of temporary help services. Provided that departments consider services available under the standing offer, they have the choice of acquiring temporary help through the PWGSC standing offer, establishing their own standing offers, or of dealing directly with other suppliers on a case by case basis.

1.3 Deleted.

1.4 When contracting for the services of individuals, including temporary help, contracting authorities should carefully review the circumstances in order to avoid establishing an employer-employee relationship which would be in conflict with the *Public Service Employment Act* or the *Public Service Staff Relations Act* and other key legislation, such as the *Employment Insurance Act* and the *Canada Pension Plan*. For guidance in assessing an employer-employee relationship, either seek legal advice or consult the Canada Customs and Revenue Agency which provides guidance, such as "[Employee or Self-Employed?](#)", publication number RC4110. Should there be any uncertainty, the contract should be signed at a level more senior than the individual who would normally approve the initial entry into the contract.

1.5 Deleted.

2. Contracting procedures

2.1 Public Works and Government Services information document

2.1.1 Public Works and Government Services provides an information document to contracting authorities describing the present special arrangements for administrative support categories in the National Capital Region as well as standard contracting practices for all other requirements. Methods of supply and contracting procedures appropriate for particular regions and categories of services have been established by Public Works and Government Services with due consideration for best value.

2.2 Public Works and Government Services standing offers

2.2.1 For administrative support and other categories both in the National Capital Region and other regions across Canada, as required in article 4.2, Related requirements, contracting authorities should give consideration to obtaining these services directly from companies with which the Department of Public Works and Government Services has entered into temporary help standing offers. Contracting authorities have the option of acquiring temporary help through a standing offer established by Public Works and Government Services, or by dealing directly, by means of a separate departmental standing offer or a contract with other suppliers.

2.2.1.1 Through the various regional offices across Canada, Public Works and Government Services issues a list of companies, including rates, terms and conditions, which contracting authorities may utilize in the engagement of temporary help. Public Works and Government Services, in consultation with the Public Service Commission, specifies in its standing offers with temporary help firms, the types and levels of employees to be provided and, where applicable, the test standards to be met by firms and the qualification standards required of employees. Public Works and Government Services requires the temporary help firms to replace immediately any of their employees whose performance is found to be unsatisfactory to the client department.

2.2.2 Call-ups against PWGSC standing offers should be reported to Public Works and Government Services.

2.2.3 The contractual arrangements of certain Public Works and Government Services standing offers provide alternative sources of supply with a range of different rates for similar services. In making call-ups against these standing offers, client contracting authorities should select specific firms based on cost-effectiveness considerations. Normally, the lowest-priced service should be chosen. It should be noted that sources supplying better quality services are not necessarily more highly-priced. Contracting authorities should not automatically select the same source for all requirements.

2.3 Authorized personnel

2.3.1 Departments and agencies should ensure that there is consistency of practice in obtaining temporary help services. Each department or agency is expected to inform Public Works and Government Services of the names of those persons who are authorized to request contracting action from Public Works and Government Services or to make call-ups against the standing offers. Such persons will generally be responsible officers performing personnel functions in the organization. The number of persons so authorized should be kept to a minimum.

2.3.2 Public Works and Government Services are to ensure that suppliers do not accept call-ups against standing offers by persons who are not specifically authorized.

2.4 Quality control

2.4.1 Contracting authorities should ensure that temporary help employees meet qualification standards specified in the contract by:

- where necessary, giving temporary help employees on-the-job tests;
- rejecting employees who are unable to perform as required; and
- reporting reasons for rejections to Public Works and Government Services.

2.4.2 It is important to maintain quality control over temporary help services provided under contract. Quality can be monitored by a co-ordinated analysis of inadequate performance, including rejections of persons provided under contract. In accordance with the procedures provided by Public Works and Government Services, contracting authorities should provide Public Works and Government Services with a summary of those firms which consistently are unable to supply personnel as well as instances in which performance was less than satisfactory, including cases when persons called up under standing offers were rejected because of inadequate performance.

2.5 Certifications

2.5.1 Under sections 33 and 34 of the *Financial Administration Act*, contracting authorities are responsible for the audit of supplier invoices and the certifications required.

3. Expenditure coding

3.1 All expenditures incurred for the services of temporary help, excluding finder fees and Public Works and Government Services charges, should be charged to the appropriate economic object, "Temporary Help Services" of Standard Object 04, "Professional and Special Services". As a result, this economic object is to be used solely for expenditures made under this policy.

Appendix J – Selection process and establishment of fees for consulting and professional services

Published March 6, 1998. The contents of this appendix contain both mandatory requirements as well as guidelines.

1. Selection process

1.1 Use of the competitive process

Consultants and professionals can be chosen using competitive bidding in several ways. This Appendix outlines a number of selection methods, allowing for varying cost considerations, that are considered appropriate for the circumstances indicated. Contracting authorities are responsible for choosing the method most appropriate to each procurement.

1.2 Best value

Consultants and professionals can be evaluated against one or more of the following criteria:

- a. qualifications to do the work,
- b. the proposed approach,
- c. the pricing and terms offered.

1.3 The qualifications of the consultant or professional must always be a factor in deciding who will do the work. Provided the technical evaluation of the consultant or professional is valid, the proposed approach, including price and terms offered, must be acceptable before a contract can be awarded.

1.4 A degree of competition among contractors is possible even when the selection cannot be based on price alone, by using the competitive proposals method (see article 10.7.11 of the Contracting Policy Guidelines). It is sometimes more appropriate in engineering, research and development, and consulting services, to base selection on the level of performance offered rather than on price alone. Proposal competitions may take one of several forms, including design competition, as outlined in article 10.7.16 of the Contracting Policy Guidelines. Because these proposals would not contain a firm price, the definition of valid bid cannot apply and consequently the lower non-competitive contracting dollar limits is applicable.

1.5 When the expense of a proposal competition is not warranted, as when the contract is less than \$40,000, a consultant or professional can be chosen based entirely on qualifications. This form is

preferable to any method that does not compare a number of qualified firms. Although this too does not qualify as a competitive contract, it can be applied in a manner similar to an employment competition.

1.6 In some circumstances, it may be appropriate to direct a contract to a particular firm without any competition as permitted by section 6 of the *Government Contracts Regulations*. Contracting authorities shall fully document the circumstances in each case which justify using this selection method.

1.7 Depending on the level of detail required, a proposal may cost a substantial amount compared to the value of the work proposed. If a large number of costly proposals are submitted in response to each proposal call, the increase in overhead costs to the industry will ultimately accrue to clients. In addition, evaluating these proposals will take longer. Proposals should not be solicited from a large number of consultants or professionals. Screening a preliminary list, based on inventory data or information from consultants or professionals, should establish a short list of enough of them to produce competition.

1.8 *Selection of a short list.* In developing a short list of consultants or professionals, the available information should be assessed against the following factors:

- experience in the fields required,
- availability of qualified personnel,
- access to supporting resources,
- capacity to complete work within the required time,
- past performance on federal government contracts,
- location of the office of the consultant or professional with respect to work area,
- sensitivity of work,
- security level required.

1.9 A reasonable number of possible contractors should then be selected for a short list using the available data outlined above. Competitive proposals could then be invited from the consultants or professionals on this short list who are interested in the work.

2. Establishment of fees (see article 16.5 of the Contracting Policy Guidelines)

2.1 Basis of payment

When it is not possible or feasible to calculate the basis of payment as a fixed price that must be specified in the contract, payment may be calculated, using one of the following methods:

- Per diem.* A fixed daily rate, including payroll and overhead costs and profit, based on the level of experience and expertise required and the length of the normal working day as defined in the contract. Generally used for short term, intermittent or other assignments when the scope of the work cannot be accurately determined.
- Payroll cost multiplied by a factor.* The multiplying factor compensates the consultant or professional for overhead costs, interest on invested capital, responsibility and profit. It varies with the type of service performed, the geographic location and the length of the assignment. This method, based on the direct costs to the consultant or professional, is suitable when the scope of the work and the services required are extensive; when it is not possible to determine accurately the scope of the services to be provided; or when a percentage fee does not

- adequately reflect the cost to the firm. It may be desirable to place a limit or ceiling price on the total payable under this method. The consultant or professional must maintain detailed time records and accounting procedures to substantiate all costs, and all records must be available for audit by the contracting authority.
- c. *Payroll and overhead costs plus a fixed fee.* This is a variant of (b) above. The consultant or professional is paid actual payroll and overhead costs, together with a fixed fee, negotiated to cover interest on invested capital, responsibility, and profit. It is used for the same type of work as the preceding method and also for the management of construction projects. The fixed fee portion is calculated as a percentage of the estimated capital cost for construction projects and as a percentage of the estimated cost of payroll plus overhead for other types of work.
- d. *Percentage of the cost of construction.* This method has two main shortcomings: the fee does not adequately reflect the cost of performing the service and it penalizes the consultant or professional for economical design. Care should be taken to stipulate a budget ceiling and to verify that the estimated fee will be in line with the estimated cost to the consultant or professional. This method has been used when the principal responsibility is design, preparing of contract documents and the providing of non-resident supervision during construction. It is expressed as a percentage of the cost of the project and the fee is translated into a fixed amount, which is calculated on:
- the construction contract award price, or
 - the pre-tender estimate approved by the contracting authority,
 - whichever is less.
- e. *Percentage of approved estimate.* Sometimes, fees based on the construction contract award price may result in inequities to either the consultant/professional or the Crown, usually because the construction market or tendering situation is not predictable enough to be used as a basis for the fee of the consultant or professional. In this event, a fixed fee may be negotiated for the design portion of the work based on a departmentally-approved estimate made before working drawings are begun. The fee applicable to the construction supervision phase should be based on the construction contract price.
- f. *Retainer.* A stipulated amount is paid at regular intervals. This method is used when the services will be required at intervals over a period of time, such as during prolonged litigation and other special advisory services. The retainer is merely to ensure that the services will be available on demand. The fee for the actual services is based on one of the methods described above.

2.2 Overtime

Overtime will not apply to consultants and professionals paid per diem, unless the contract provides it and it is specifically authorized by the contracting authority. Compensation for actual overtime worked by the staff of the consultant or professional, as authorized by the contracting authority, must be based on payroll costs for normal working hours plus the applicable overtime premium. The multiplying factor for overhead must not be applied to the overtime premium.

2.3 Expenses and disbursements

Normally the consultant or professional is reimbursed for the actual cost of direct out-of-pocket expenses or disbursements incurred during the course of work as stipulated in the contract and subject to the prior approval of the contracting authority.

Appendix K – Annual reporting requirements for contracting activities TB 813169, June 29, 1990, as amended

Published May 31, 1993. The contents of this appendix contains mandatory annual reporting requirements.

1. Reporting requirements for government departments and agencies

1.1 Departments and agencies are to submit an annual report on the total number and dollar amounts of construction and service contracts (as defined in the *Government Contracts Regulations*), including amendments awarded within a department's own departmental authorities.

1.2 Data on contracting activities is to be broken down by Basic contracting limits and Exceptional contracting limits (as defined in the Treasury Board Contracts Directive) and further organized into competitive, non-competitive and amendments. Information on the following items is to be excluded from the report:

- a. real property leases;
- b. call-ups against standing offers established by the Department of Supply and Services (SSC);
- c. contracts awarded by common service agencies on behalf of clients;
- d. emergency contracts (see Note); and
- e. contract proposals which received Treasury Board approval (see Note).

2. Reporting requirements for the Departments of Public Works

2.1 In addition to reporting as per government departments and agencies, the Department of Public Works (PWC) is to report on all contracts awarded on behalf of each of its clients or in support of PWC programs. PWC no longer reports on real property leasing activities.

3. Reporting requirements for the Department of Supply and Services

3.1 The Department of Supply and Services (SSC) is required to report annually the total number and dollar amounts of construction, goods and services contracts (as defined in the *Government Contracts Regulations*), including amendments, awarded within departmental authority on behalf of each government department or in support of SSC programs.

3.2 Data on contracting activities is to be broken down by Basic contracting limits (subdivided into construction, goods and services), Exceptional contracting limits (as defined in the Treasury Board Contracts Directive), and non-discretionary contracts. These categories are to be further organized into competitive, non-competitive, and amendments. Information on the following items is to be excluded from the report:

- a. real property leases,
- b. call-ups by departments against standing offers established by SSC (except for departmental call-ups for temporary help services, which are to be reported to the Treasury Board Secretariat by DSS),
- c. contracts awarded by DPW on behalf of DSS,
- d. emergency contracts (see note), and

e. contract proposals which received Treasury Board approval (see Note).

4. Reporting date

All contracting authorities are to report to the Treasury Board Secretariat on contracting activities, within two months subsequent to the end of the fiscal year.

Note:

If convenient, departments may include these contracts or contract proposals in the report, but must then identify subtotals for them. If this cannot be done readily, departments may request this information from the Treasury Board Secretariat.

Relevant forms

Title of form	No. of form	Initiated by	Available from	Phone no. Fax no.
Annual Contracting Activity Report by Department/Agency	TBS/SCT 350-91 (Rev. 1993/03) A	TBS	TBS	(613) 957-2487 (613) 952-1381
Annual Contracting Activity Report by Supply and Services Canada	TBS/SCT 350-91 (Rev. 1993/03) B	TBS	TBS	(613) 957-2487 (613) 952-1381
Annual Contracting Activity Report by Public Works Canada	TBS/SCT 350-91 (Rev. 1993/03) C	TBS	TBS	(613) 957-2487 (613) 952-1381
Annual Contracting Activity Report by Treasury Board Secretariat	TBS/SCT 350-91 (Rev. 1993/03) D	TBS	TBS	(613) 957-2487 (613) 952-1381
Annual Contracting Activity Report Roll Up	TBS/SCT 350-91 (Rev. 1993/03) E	TBS	TBS	(613) 957-2487 (613) 952-1381

Appendix L – Acceptable Bonding Companies

Published August 2013

Only insurance companies that have been licensed by a Canadian federal, provincial or territorial regulator to provide financial security when operating in the jurisdiction of the regulator may provide financial security for federal Crown procurement contracts.

The source lists of companies licensed to provide surety within Canada can be found through the Canadian federal, provincial or territorial regulators' websites listed below. These sites will provide the latest and most accurate information.

Federal Financial Regulator

[Office of the Superintendent of Financial Institutions – Search Companies](#)

Provincial and Territorial Financial Regulators

Alberta	Superintendent of Insurance	Search Companies
British Columbia	Financial Institutions Commission	Search Companies
Manitoba	Financial Institutions Regulation Branch	Annual Reports
New Brunswick	Justice and Attorney General - Insurance Branch	Search Companies
Newfoundland and Labrador	Superintendent of Insurance	Search Companies
Northwest Territories	Superintendent of Insurance	Annual Reports
Nova Scotia	Superintendent of Insurance	Search Companies
Nunavut	Superintendent of Insurance	Annual Reports
Ontario	Financial Services Commission of Ontario	Search Companies
Prince Edward Island	Consumer, Labour and Financial Services	Contact
Quebec	Quebec Financial Markets Regulator	Search Companies
Saskatchewan	Saskatchewan Financial Services Commission	Search Companies
Yukon	Superintendent of Insurance	Contact

For the convenience of the federal procurement community, Treasury Board of Canada Secretariat provides the following administrative compilation of acceptable bonding companies, based on information collected from federal, provincial and territorial sources. However, for absolute certainty, contracting authorities should verify the status of companies with the official lists of the relevant regulators.

1. Canadian Companies

- ACE INA Insurance
- AIG Insurance Company of Canada
- Allstate Insurance Company of Canada
- Ascentus Insurance Ltd. (Surety only)
- Aviva Insurance Company of Canada
- AXA Insurance (Canada)
- AXA Pacific Insurance Company
- Canadian Northern Shield Insurance Company
- Certas Direct Insurance Company (Surety only)
- Chubb Insurance Company of Canada
- Co-operators General Insurance Company
- CUMIS General Insurance Company
- Dominion of Canada General Insurance Company (The)
- Echelon Insurance (Surety only)
- Economical Mutual Insurance Company
- Elite Insurance Company
- Everest Insurance Company of Canada

- Federated Insurance Company of Canada
- Federation Insurance Company of Canada
- Gore Mutual Insurance Company
- Guarantee Company of North America (The)
- Intact Insurance Company
- Jevco Insurance Company (Surety only)
- Missisquoi Insurance Company (The)
- Nordic Insurance Company of Canada (The)
- North Waterloo Farmers Mutual Insurance Company (The) (Fidelity only)
- Northbridge Commercial Insurance Corporation
- Northbridge General Insurance Corporation
- Northbridge Indemnity Insurance Corporation
- Northbridge Personal Insurance Corporation
- Novex Insurance Company (Fidelity only)
- Personal Insurance Company (The)
- Pilot Insurance Company
- Quebec Assurance Company
- Royal & Sun Alliance Insurance Company of Canada
- Saskatchewan Mutual Insurance Company (Fidelity only)
- Scottish & York Insurance Co. Limited
- Sovereign General Insurance Company (The)
- TD General Insurance Company
- Temple Insurance Company
- Traders General Insurance Company
- Travelers Insurance Company of Canada
- Trisura Guarantee Insurance Company
- Waterloo Insurance Company
- Wawanesa Mutual Insurance Company (The)
- Western Assurance Company
- Western Surety Company
- Wynward Insurance Group

2. Provincial Companies

Surety bonds issued by the following companies may be accepted provided that the contract of suretyship was executed in a province in which the company is licensed to do business as indicated in brackets.

- ALPHA, Compagnie d'Assurances Inc. (Que.)
- La Capitale General Insurance Inc. (Nfld. & Lab., N.S., P.E.I., Que. (Surety only), Man., Sask., Alta., B.C., Nun., N.W.T., Yuk.)
- Coachman Insurance Company (Ont.)
- Fenchurch General Insurance Company (Nfld. & Lab., P.E.I., N.B., Ont., Man., Sask., Alta., B.C.)
- GCAN Insurance Company (Nfld. & Lab., N.S., P.E.I., N.B., Que., Ont., Man., Sask., Alta., B.C., Nun., N.W.T., Yuk.)

- The Insurance Company of Prince Edward Island (N.S., P.E.I., N.B.)
- SGI CANADA Insurance Services Ltd. (Ont., Man., Sask., Alta.)
- L'Unique General Insurance Inc. (Nfld. & Lab., N.S., P.E.I., N.B., Que. (Surety only), Ont. (Surety only), Man., Sask., Alta., B.C. (Surety only), Nun., N.W.T., Yuk.)

3. Foreign Companies

- Affiliated FM Insurance Company
- Allianz Global Risks US Insurance Company (Surety only)
- Allstate Insurance Company
- American Bankers Insurance Company of Florida
- American Road Insurance Company (The) (Surety only)
- Arch Insurance Company
- Aspen Insurance UK Limited
- AXIS Reinsurance Company
- Berkley Insurance Company
- Cherokee Insurance Company (Surety only)
- Compagnie Française d'Assurance pour le Commerce Extérieur (Fidelity only)
- Continental Casualty Company
- CorePointe Insurance Company (Surety only)
- Darwin National Assurance Company (Fidelity only)
- Ecclesiastical Insurance Office Public Limited Company (Fidelity only)
- Employers Insurance Company of Wausau
- Factory Mutual Insurance Company
- Federal Insurance Company
- General Reinsurance Corporation
- Great American Insurance Company
- Hartford Fire Insurance Company
- International Insurance Company of Hannover Limited (Fidelity only)
- Jewelers Mutual Insurance Company (Fidelity only)
- Liberty Mutual Insurance Company
- Lloyd's Underwriters
- Mitsui Sumitomo Insurance Company, Limited
- Motors Insurance Corporation
- Munich Reinsurance America, Inc.
- NIPPONKOA Insurance Company, Limited
- Sentry Insurance a Mutual Company
- Sompo Japan Insurance Inc.
- St. Paul Fire and Marine Insurance Company
- State Farm Fire and Casualty Company
- Tokio Marine & Nichido Fire Insurance Co., Ltd.
- Triton Insurance Company (Fidelity only)
- Westport Insurance Corporation
- XL Specialty Insurance Company, (Surety only)
- Zurich Insurance Company Ltd.

Appendix M – Lobbyists and Contracting

Published September 8, 1997.

1. The use of lobbyists by a prospective contractor is not prohibited. However, contractors who do business with the government must not retain lobbyist whom they pay on a contingency basis. This means that lobbyists must not be paid a fee or compensation related to the value of the contract. If lobbyists are retained in connection with a proposed or actual contract with the Crown, they should be paid on a fee for services or retainer basis.
2. The restriction on the use of lobbyists applies only to contracts where lobbyists are or may be expected to be used. Each contracting authority should determine this fact in advance and if lobbyists are traditionally used (or could possibly be used), a clause prohibiting payment on a contingency fee basis must be included in the contract documentation between the Crown and the supplier.
3. In circumstances where organizations contracting with lobbyists to assist them when seeking grants or contributions from federal government entities, fees paid to lobbyists should not be related to the value of any grant or contribution. Departments and agencies are to ensure that organizations, seeking various forms of government assistance, should not pay lobbyists on a contingency fee basis.
4. All contracting authorities must include in all applicable contracts a lobbyist certification clause to prohibit suppliers from engaging lobbyists on a contingency fee basis to help them obtain contracts. Contracting authorities should seek the advice of their Justice Department representative on the specific wording of an appropriate clause. The following are sample clauses for goods and services contracts:
 - i. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
 - ii. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiating of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
 - iii. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
 - iv. In this section:
 - "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Contract or negotiating the whole or any part of its terms.
 - "employee" means a person with whom the Contractor has an employer/employee relationship;
 - "person" includes an individual or group of individuals, a corporation, a partnership, an organization an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyist Registration Act* R.S. 1985 c. 44 (4th Supplement) as the same may be amended from time to time.

Appendix N – Deleted.

Deleted.

Appendix O – Federal Building Initiative – Energy Management

Published March 6, 1998.

1. General

1.1 The Federal Building Initiative is designed to help departments make investments to improve energy efficiency in their buildings. Canadian utility companies are promoting demand side management programs to reduce electrical consumption. Financial incentives are aimed at various consumer groups including the federal government.

1.2 Custodian departments have contract entry authority needed to enter into agreements with utility companies and the private sector to make energy efficiency improvements to federal buildings.

1.3 Efficiency improvements may include installation of high efficiency lights and motors, modification of heating, ventilation and air conditioning systems, upgrading building envelopes, better design for new construction, and changes to operating and maintenance practices. Cogeneration of electricity may be possible in some cases

2. Policy

2.1 The Treasury Board has authorized any contracting authority to enter into and amend a service contract to acquire energy services, which may include energy supply, energy efficiency improvements, management services, energy management monitoring and training, if the total under the contract, including any amendments does not exceed \$25 million on condition that the first energy management contract over \$1 million be submitted to the Treasury Board for approval.

2.2 The supply of energy as well as management and efficiency improvements should be obtained through the use of energy management contracts, as follows:

- a. An energy management firm will be responsible for acquiring the initial capital required. Incentives from the utility company will accrue to the management firm and reduce the length of the playback period for the custodian department.
- b. The management firm will invoice the custodian department for energy bills and make physical and operational improvements in the buildings. The firm will recover its costs and profit over the term of the contract from an energy management service fee which is equal to the energy savings or the difference between the pre-improvement energy bills and the actual energy bills.
- c. The energy services bill paid by the custodian department will be equivalent to the energy bills before improvements, adjusted for rate increases and any supplemental fluctuation in energy demand such as a major change in the use of the building or to health and safety standards.
- d. At the end of the contract period the custodian department resumes its regular relationship with the utility company. At that point, its energy costs would drop. In the meantime, it would not be paying any more than it would have had it not entered into this agreement.

2.3 Each energy management contract presents a specific situation that must be evaluated on its own merits. Where economically feasible, energy management contracts may be structured for a partial sharing of the savings over a prolonged pay-back period. Cost/benefit analyses should be carried out to determine the most appropriate payback period.

2.4 The contracts will include goods procurement related to the energy services. As well, the total package must meet the requirements set out in the North American Free Trade Agreement, in the World Trade Organization Agreement on Government Procurement and in the Agreement on Internal Trade.

2.5 Under the Federal Buildings Initiative, Natural Resources Canada will assist federal government departments to improve the energy efficiency of their facilities without compromising the work environment of employees. The services available will include model agreements for savings financing and utility incentives; health and safety guidelines; training packages for building operators and managers; information packages for federal employees; model long-term energy management plans; technical specification guidelines; model contract and bid packages; and qualified bidders list for firms to conduct energy efficiency improvements.

Appendix P – Amended June 2008

Reserved.

Appendix Q – Amended January 2003.

Reserved.

Appendix R – Policy on the Use of Standby Letters of Credit as an Alternative to Bid or Contract Security for Federal Government Contracts

Published March 6, 1998. This appendix contains mandatory instructions.

1. Definitions

1.1 For the purpose of this policy, a **standby letter of credit** (hereinafter referred to as "letter of credit") means any arrangement, however named or described, whereby a financial institution (the "Issuer"), acting at the request and on the instructions of a customer (the "Applicant"), or on its own behalf, is to make a payment to or to the order of the Crown, as the beneficiary, or is to accept and pay bills of exchange drawn by the Crown, or authorizes another financial institution to effect such payment, or accept and pay such bills of exchange, or authorizes another financial institution to negotiate, against written demand(s) for payment, provided that the terms and conditions of the letter of credit are complied with.

1.2 A bid support letter of credit is a letter of credit pursuant to which demand may be made if the proposed contractor refuses or fails to enter into a written contract in accordance with the terms and conditions of the bid or fails to provide the required contract security.

1.3 A contract support letter of credit is a letter of credit pursuant to which demand may be made if the contractor, having entered into a contract with the Crown, does not perform the contract in accordance with the terms and conditions of that contract.

1.4 The expression "member of the Canadian Payments Association" is defined in the *Canadian Payments Association Act*.

1.5 The expression "UCP" means the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No 600.

2. Nature of Letters of Credit

2.1 The UCP provides that letters of credit, by their nature, are separate transactions from the contracts on which they may be based and financial institutions are in no way concerned with or bound by such contracts, even if any reference whatsoever to such contracts is included in the letters of credit. In letters of credit operations, all parties concerned deal with documents, and not with goods, services and/or other performances to which the documents may relate.

2.2 The undertaking of a financial institution to pay, accept and pay bill(s) of exchange or negotiate and/or to fulfil any other obligation under the letter of credit, is not subject to claims or defences by the Applicant resulting from its relationships with the financial institution or the Crown.

3. Policy on use of Letter of Credit

3.1 A letter of credit which is issued by a financial institution which is a member of the Canadian Payments Association, may be accepted by a contracting authority either to provide an incentive for entry into or performance of a contract, or to provide a source of funds to mitigate damages if the successful bidder fails to enter into or perform the contract.

3.2 An irrevocable letter of credit which is issued by a financial institution (the "Issuer") which is not a member of the Canadian Payments Association is acceptable provided it is confirmed by a financial institution (the "Confirmer") that is a member of the Canadian Payments Association and is otherwise in compliance with this policy.

3.3 A revocable letter of credit is one that may be amended or cancelled by the Issuer at any moment and without prior notice to the Crown as beneficiary. The Crown shall only accept letters of credit that clearly specify that they are **irrevocable** or are deemed to be irrevocable pursuant to article 6 c) of the UCP.

3.4 A letter of credit described in this section may be accepted as an alternative to bid or contract security for all contracts.

3.5 A letter of credit shall:

- a. state the face amount which may be drawn against it;
- b. state its expiry date;
- c. provide for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by the authorized departmental representative identified in the letter of credit by his office;

- d. provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face amount of the Letter of Credit;
- e. provide that it is subject to the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No 600.

4. Form of Letter of Credit

4.1 The letter of credit may be issued or confirmed in either official language and shall be on the letterhead of the Issuer or Confirmer. The format is left to the discretion of the Issuer or Confirmer.

5. Determination of Face Amount and Term of a Letter of Credit

5.1 The face amount of a bid or contract support letter of credit for all types of contract is to be determined by the contracting authority, taking into account pertinent factors, such as the inherent risks of the contract and the custom generally accepted in the particular profession or trade involved.

5.2 The face amount of a contract support letter of credit may be increased or reduced commensurate with the change in risk that has occurred. The face amount may be changed by an amendment to the letter of credit. Alternatively, the letter of credit may contain an express provision for change by a specified or determinable amount or amounts on a specified date or dates or upon presentation of the document(s) specified for this purpose such as an interim certificate of completion.

5.3 Any letter of credit received by the Crown must have an appropriate expiry date. The letter of credit should not have its expiry coincide with the projected cessation of the risk which it covers: for instance, the expiry date stated in the letter of credit should not be the same date as that which is projected for the award of the contract or the completion of the work. Rather, the expiry date should allow for a comfortable turn-around time from the estimated date of award of contract or completion of the work, to ensure that the contracting authority is satisfied that the bidder or contractor has discharged its obligations for which the letter of credit was provided. If the contractor has not met its obligations, the contracting authority must have sufficient time to prepare and present the required demand for payment under the letter of credit.

6. Payment of a Letter of Credit

6.1 After an offer is accepted within the specified time after the closing date for bidding, and if the contractor refuses to enter into the contract or refuses or is unable to furnish any required contract security or contract support letter of credit, the Crown may demand payment under the bid support letter of credit in accordance with its terms. Proceeds from the letter of credit shall be applied in accordance with the terms and conditions governing the bid solicitation.

6.2 During the performance of a contract, if the contractor does not comply with all the terms and conditions of the contract, the Crown may demand payment under the contract support letter of credit in accordance with its terms. Proceeds from the letter of credit shall be applied in accordance with the terms and conditions of the contract.

6.3 The Crown demands payment under the terms and conditions of a letter of credit by presenting one or more written demand(s) for payment, signed by an authorized departmental representative identified in the Letter of Credit by his office.

7. ICC Uniform Customs and Practice for Documentary Credits

7.1 The letters of credit used pursuant to this policy must contain reference to and follow the practices of the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 2007 Revision in force since January 1, 1994, known as ICC Publication No 600.

8. Safekeeping

8.1 Where a Letter of Credit is received by a contracting authority, the contracting authority shall hold the Letter of Credit in a place adequate for safekeeping.

Appendix S – Surety bonds for government contracts

Published February 1, 1995. This appendix is a guideline for the use of surety bonds for government.

The Claimant's Payment Bond form contained in this Appendix is a new security option that may be used in construction contracts effective January 1, 1994. When one or more claims are made against the prime contractor, the posting of a Claimant's Payment Bond by the prime contractor will permit regular payments by the Crown under the contract while the disputes are being settled between the various parties. The use of the bond in construction contracts provides a remedy to contractors whose cash flow would otherwise suffer as a result of claims against them.

The Labour and Material Payment Bond contained in this Appendix and the current versions of the Bid Bond and the Performance Bond are all under revision, and should continue to be used until further notice.

Labour and Material Payment Bond

No. [insert text] \$ [insert text]

KNOW ALL PERSONS BY THESE PRESENTS, That [insert text] as Principal, hereinafter called the Principal, and [insert text] as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto [insert text] as Obligee, hereinafter called the Crown, in the amount of [insert text] Dollars (\$ [insert text]), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this [insert text] day of [insert text]

WHEREAS, the principal has entered into a Contract with the Crown, dated the [insert text] day of [insert text] for [insert text] which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if payment is promptly made to all Claimants who have performed labour or services or supplied material in connection with the Contract and any and all duly authorized modifications and extensions of the Contract that may hereafter be made, notice of which modifications and extensions to the Surety being hereby waived, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

For the purpose of this bond, a Claimant is defined as one having a direct contract with the Principal or any Sub-Contractor of the Principal for labour, material or both, used or reasonably required for use in the performance of the Contract, labour and material being constituted to include that part of water, gas, power,

light, heat, oil, gasoline, telephone service or rental of equipment (but excluding rental of equipment where the rent pursuant to an agreement is to be applied towards the purchase price thereof) directly applicable to the Contract.

For the purpose of this bond, no payment is required to be made in respect of a claim for payment for labour or services performed or material supplied in connection with the Contract that represents a capital expenditure, overhead or general administration costs incurred by the Principal during the currency or in respect of the Contract.

The Principal and the Surety hereby jointly and severally, or, where this Bond is subject to the law of the Province of Quebec, solidarily agree with the Crown that if any Claimant has not been paid as provided for under the terms of its contract with the Principal or a subcontractor of the Principal before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's labour or service was done or performed or materials were supplied by such Claimant, the Crown may sue on this bond, have the right to prosecute the suit to final judgement for such sum or sums as may be due and have execution thereon; and such right of the Crown is assigned by virtue of Part VIII of the *Financial Administration Act* to such Claimant.

For the purpose of this bond the liability of the Surety and the Principal to make payment to any claimant not having a contract directly with the Principal shall be limited to that amount which the Principal would have been obliged to pay to such claimant had the provisions of the applicable provincial or territorial legislation on lien or privileges been applicable to the work. A claimant need not comply with provisions of such legislation setting out steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had. Any such claimant shall be entitled to pursue a claim and to recover judgment hereunder subject to the terms and notification provisions of the Bond.

Labour and Material Payment Bond

Any material change in the Contract between the Principal and the Crown shall not prejudice the rights or interest of any Claimant under this bond who is not instrumental in bringing about or has not caused such change.

No suit or action shall be commenced hereunder by any Claimant:

- a. Unless such Claimant shall have given written notice within the time limits hereinafter set forth to the Principal and the Surety above named, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal and the Surety at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Contract is located. Such notice shall be given
 - i. in respect of any claim for the amount or any portion thereof required to be held back from the Claimant by the Principal or by the Sub-Contractor of the Principal under either the terms of the Claimant's Contract with the Principal or the Claimant's Contract with the Sub-Contractor of the Principal within one hundred and twenty (120) days after such Claimant should have been paid in full under its Contract,
 - ii. in respect of any claim other than for the holdback or portion thereof referred to above within one hundred and twenty (120) days after the date upon which such Claimant did or performed the last of the service, work or labour or furnished the last of the materials for which such claim is made under the Claimant's Contract with the Principal or a Sub-Contractor of the Principal;

- b. After the expiration of one (1) year following the date on which the Principal ceased work on the said Contract, including work performed under the guarantees provided in the Contract;
- c. Other than in a court of competent jurisdiction in the province or district of Canada in which the subject matter of the Contract or any part thereof is situated and not elsewhere, and the parties hereto hereby agree to submit to the jurisdiction of such court.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

The Surety shall not be entitled to claim any moneys relating to the Contract and the liability of the Surety under this Bond shall remain unchanged and, without restricting the generality of the foregoing, the Surety shall pay all valid claims of Claimants under this Bond before any moneys relating to the Contract held by the Crown are paid to the Surety by the Crown.

The Surety shall not be liable for a greater sum than the amount specified in this bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness

Principal

Surety

Note:

Affix Corporate seal if applicable

Claimant's Payment Bond

No. [insert text]

Bond Posted as Security Pursuant to the Contract Documents.

KNOW ALL PERSONS BY THESE PRESENTS, That [insert text] as Principal, hereinafter called the Principal, and [insert text] as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto [insert text] as Obligee, hereinafter called the Crown, in the amount of [insert text] Dollars (\$ [insert text]), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, or, where this bond is subject to the law of the Province of Quebec, as solidary debtors, and firmly by these presents.

SIGNED AND SEALED this [insert text] day of [insert text]

WHEREAS, the principal has entered into a Contract with the Crown, dated the [insert text] day of [insert text] for [insert text]

AND WHEREAS, the Crown has notified the Principal in writing of its intention to withhold contract funds, pursuant to Clause [insert text] of the Contract for the following claim(s) registered against the Contract:

Date of Notification: [insert text]

Claimant: [insert text]

Amount: [insert text]

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that this Bond stands in lieu of and as security for the release to the Principal of funds which otherwise would have been withheld by the Crown, by reason of Clause [insert text] of the Contract on account of the aforementioned claim(s).

To the intent and condition that if the Principal shall pay or cause to be paid the said claim(s) as the Principal may be directed by the Crown to pay, which claim(s) otherwise the Crown would have been entitled to pay by reason of Clause [insert text] of the Contract, then this obligation shall be void, otherwise it shall remain in full force and effect.

The Crown may sue on this Bond, have the right to prosecute the suit to final judgment for such sum or sums as may be due and have execution thereon; and such right of the Crown is assigned by virtue of Part VIII of the *Financial Administration Act* to each such aforementioned claimant.

Provided that, no suit or action shall be instituted by the Crown or its assignees herein against the Surety, unless the claimant(s) shall have commenced the proceedings to determine the right to payment pursuant to Clause [insert text] of the Contract within one year from the date of notification referred to in Clause [insert text] of the Contract.

Provided further that:

- i. the amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder;
- ii. the Surety shall not be liable for a greater sum than the total amount specified in this Bond.

IN WITNESS WHEREOF these presents have been executed by the Principal under its hands and seal and by the Surety by its seal and by the signature of its Attorney this [insert text] day of [insert text].

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness

Principal

Surety

Note:

Affix Corporate seal if applicable

BID BOND

Bond No.[insert text]	Amount: [insert text]
-----------------------	-----------------------

KNOW ALL PERSONS BY THESE PRESENTS, that [insert text] as Principal, hereinafter called the Principal, and [insert text] as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto [insert text, as Obligee, hereinafter called the Crown, in the amount of [insert text] Dollars (\$ [insert text]), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this [insert text] day of [insert text]

WHEREAS, the Principal has submitted a written tender to the Crown, dated the [insert text] day of [insert text] for [insert text]

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if:

- a. the Principal, should its tender be accepted within the period specified by the Crown, or, if no period be specified, within one hundred and twenty (120) days after closing date of the tender, does execute within a period specified by the Crown, or, if no period be specified therein, within fourteen (14) days after the prescribed forms are presented to him for signature, execute such further contractual documents, if any, as may be required by the terms of the tender as accepted, and does furnish a Performance Bond and a Labour and Material Payment Bond, each in the amount of 50% of the Contract price and satisfactory to the Crown, or other security acceptable to the Crown, or
- b. the Principal does pay to the Crown the difference between the amount of the Principal's tender and the amount of the Contract entered into by the Crown for the work, supplies and services which were specified in the said tender, if the latter amount be in excess of the former,

then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that the Surety and the Principal shall not be liable to the Crown for an amount greater than the amount specified in the Bond.

PROVIDED FURTHER that the Surety shall not be subject to any suit or action unless such suit or action is instituted and process therefore served upon the Surety at its Head Office in Canada, within twelve (12) months from the date of this Bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

Principal

Witness

Surety

Note: Affix Corporate seal if applicable.

PERFORMANCE BOND

Bond No. [insert text]	Amount: [insert text]
------------------------	-----------------------

KNOW ALL PERSONS MEN BY THESE PRESENTS, that [insert text] as Principal, hereinafter called the Principal, and [insert text] as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto [insert text] as Obligee, hereinafter called the Crown, in the amount of [insert text] Dollars (\$ [insert text]), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this day of, [insert text]

WHEREAS, the Principal has entered into a Contract with the Crown, dated [insert text] for [insert text] which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if the Principal shall well and faithfully observe and perform all the obligations on the part of the Principal to be observed and performed in connection with the Contract, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. Whenever the Principal shall be, and declared by the Crown to be, in default under the Contract, the Surety shall
 - a. if the work is not taken out of the Principal's hands, remedy the default of the Principal
 - b. if the work is taken out of the Principal's hands and the Crown directs the Surety to undertake the completion of the work, complete the work in accordance with the Contract provided that if a contract is entered into for the completion of the work
 - i. it shall be between the Surety and the completing contractor, and
 - ii. the selection of such completing contractor shall be subject to the approval of the Crown,
 - c. if the work is taken out of the Principal's hands and the Crown, after reasonable notice to the Surety, does not direct the Surety to undertake the completion of the work, assume the financial responsibility for the cost of completion in excess of the moneys available to the Crown under the Contract,
 - d. be liable for and pay all the excess costs of completion of the Contract, and
 - e. not be entitled to any Contract moneys earned by the Principal, up to the date of his default on the Contract and any holdbacks relating to such earned Contract moneys held by the Crown, and the liability of the Surety under this Bond shall remain unchanged provided, however, and without restricting the generality of the foregoing, upon the completion of the Contract to the satisfaction of the Crown, any Contract moneys earned by the Principal or holdbacks related thereto held by the Crown may be paid to the Surety by the Crown.
2. The Surety shall not be liable for a greater sum than the amount specified in this Bond.
3. No suit or action shall be instituted by the Crown herein against the Surety pursuant to these presents after the expiration of two (2) years from the date on which final payment under the Contract is payable.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

Appendix T – James Bay and Northern Quebec Agreement – Contract Priority

Published April 1, 1992. The contents of this appendix contain both mandatory requirements as well as guidelines.

1. General

- 1.1 This appendix supplements the provisions of Section 4., Policy requirements, and article 4.2.22, Related requirements.
2. The objective of this policy is the continued implementation of the contract priority provisions of the James Bay and Northern Quebec Agreement (JBNQA) in relation to contracts created by projects initiated or conducted by the Crown or its agents, delegates, contractors or sub-contractors.
3. The policies and implementing measures shall, to the greatest extent possible, be designed to achieve the following objectives:
 - a. increase participation by Inuit firms in business opportunities in the economy of the Territory;
 - b. enhance the ability of Inuit firms to compete for and obtain government contracts;
 - c. award a fair share of government contracts in the Territory to qualified Inuit firms; and,
 - d. employ Inuit at a representative level in the workforce of the Territory.

4. List of Inuit Firms

- 4.1 Makivik, a corporation constituted as the Inuit Native Party for the purposes of the JBNQA, has the responsibility to prepare and maintain a comprehensive list of Inuit firms, which will include information on the goods and services those firms would be in a position to furnish in relation to actual or potential government contracts. Makivik shall undertake the necessary measures to ensure that this data is maintained and updated on a continuous basis.
- 4.2 Makivik shall ensure that the List of Inuit Firms is provided to the federal government departments and agencies active in the Territory.

5. Contracting procedures

- 5.1 Contracting authorities shall use the List of Inuit Firms for purposes of requesting Inuit firms to solicit bids, but shall not restrict the ability of any Inuit firm to submit bids for government contracts, in accordance with the Bid Invitation process where bids are invited by public notice.
- 5.2 The Crown, namely the Common Service Agents shall, upon the request of Makivik, provide reasonable assistance in familiarizing Inuit firms with the contracting procedures of the Crown.
- 5.3 In the planning stage of government contracts for the provision of goods, services, construction, or leases in the Territory, contracting authorities shall undertake all reasonable measures to provide

opportunities to qualified Inuit firms to compete for and obtain such contracts. Contracting authorities should consider, but not necessarily be limited to, the following measures:

- a. set the date, location, and terms and conditions for bidding so that Inuit firms may readily bid;
- b. invite bids by commodity groupings to permit smaller and more specialized Inuit firms to bid;
- c. permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized Inuit firms to bid;
- d. design construction contracts in a way so as to increase the opportunity for smaller and more specialized Inuit firms to bid; and,
- e. avoid artificially inflated employment skill requirements not essential to the fulfilment of the contract.

6. Bid Evaluation Criteria

6.1 Whenever practicable and consistent with sound procurement management, all of the following criteria, or as many as may be appropriate with respect to any particular government contract, shall be included in the bid evaluation criteria established by the contracting authority for the awarding of government contracts in the Territory:

- a. the contribution by Inuit in carrying out the contract, which will include, but shall not be limited to, the employment of Inuit labour, the engagement of Inuit professional services or the use of Inuit suppliers;
- b. creation of permanent head offices, administrative offices or other facilities in the Territory; and,
- c. the undertaking of commitments, under the contract, with respect to on-the-job training or skills development for the Inuit.

7. Bid Solicitation from Supplier's Lists

7.1 Wherever practicable and consistent with sound procurement management, contracting authorities will first solicit bids from within the Territory.

7.2 Where the Crown intends to solicit bids for government contracts in the Territory, the contracting authority will make all possible attempts to award contracts to qualified Inuit firms.

7.3 Where the Crown intends to solicit bids for government contracts in the Territory, the contracting authority shall take all reasonable measures to determine if there are Inuit firms qualified to perform government contracts.

7.4 Where it is determined that there is a single firm within the Territory qualified to perform a government contract, the contracting authority will solicit that firm to submit a bid for the government contract. The contract may be awarded upon negotiation of acceptable terms and conditions.

7.5 Where the Crown intends to solicit bids from more than one qualified firm within the Territory, the contracting authority shall take all reasonable measures to determine if there are Inuit firms qualified to perform the government contract, and shall solicit bids from those Inuit firms.

7.6 Where a contract has been awarded it is the responsibility of the contracting authority to ensure that the contract document contains appropriate terms and conditions to make certain that sub-contractors to the contractor are also subject to the intent and the specific provisions of the contract.

8. Bid Invitation using Public Notice

8.1 Wherever practicable, and consistent with sound procurement management, contracting authorities will first invite bids from within the Territory.

8.2 Where the Crown intends to invite bids for government contracts to be performed in the Territory, contracting authorities shall take all reasonable measures to inform Inuit firms of such bids, and to provide Inuit firms with a fair and reasonable opportunity to submit bids.

8.3 Where the Crown intends to invite bids for government contracts to be performed in the Territory, the Bid Invitation process shall take into account the Bid Evaluation Criteria found in article 6.

8.4 Where a contract has been awarded, it is the responsibility of the contracting authority to ensure that the contract document contains appropriate terms and conditions to make certain that sub-contractors to the contractor are also subject to the intent and the specific provisions of the contract.

Annex A – Definitions

Bid Invitation (*appel d'offres*)

means to call publicly for bids;

Bid Solicitation (*appel d'offres limité*)

means to request bids from a limited number of businesses based on some form of prequalification or selection criteria;

Crown (*Canada*)

means the Government of Canada, which shall be deemed to include all departments and departmental corporations listed in Schedules I and II, Part I of the *Financial Administration Act*, Chapter F-11, R.S.C. F-10,s.1;

Government Contract (*marché de l'État*)

means any procurement contract between the Crown and a party other than the Crown, and includes:

- i. contracts for the supply of goods;
- ii. construction contracts;
- iii. contracts for the supply of services; and
- iv. leases taken by the Crown.

Inuit (*Inuit*)

means Inuit beneficiaries pursuant to the JBNQA;

Inuit firm (*entreprise inuit*)

means an entity which complies with the legal requirements to carry on business in Northern Quebec, and which:

- i. is a limited company with, in the case of a share-capital company, at least 51% of the company's voting shares beneficially owned by one or more Inuit, or with, in the case of a non-share capital company, at least 51% of the voting members being Inuit, or which is a subsidiary

- of such limited company with at least 51% of the subsidiary's voting shares owned by the company;
- ii. is a cooperative controlled by Inuit; or
 - iii. is a sole source proprietorship owned by Inuit; or a partnership, joint venture or consortium, at least 50% of which is owned by the Inuit.

JBNQA (CBJNQ)

The James Bay and Northern Quebec Agreement entered into on November 11, 1975, as amended from time to time in accordance with paragraph 2.15 thereof;

JBNQA Implementation Agreement (1990) (*Accord de mise en oeuvre de la CBJNQ (1990)*)

Agreement respecting the implementation of the JBNQA between Her Majesty the Queen in right of Canada and Makivik corporation entered into on September 12, 1990

Makivik (*Makivik*)

Makivik Corporation, the corporation established by the *Act to Establish the Makivik Corporation* (R.S.Q., ch.S-18.1), and constituted as the Inuit Native Party for purposes of the JBNQA pursuant to paragraph 1.11 thereof;

Representative level of employment (*niveau d'emploi représentatif*)

means a level of Inuit employment in Northern Quebec that reflects the ratio of Inuit to the total population of the Territory;

Territory (*territoire*)

means the area in the province of Quebec north of the 55th parallel of latitude, as delineated in the JBNQA.

Appendix U – Amended June 2003.

Reserved.

Appendix V – Amended June 2003.

Reserved.

Appendix W – Amended June 2003.

Reserved.

Appendix X – Amended June 2003.

Reserved.

The Agreement Between the Government of the Republic of Korea and the Government of Canada on the Procurement of Telecommunications Equipment was terminated, effective September 1, 2005.

See [Contracting Policy Notice 2005-2](#)

Appendix Y

The Agreement Between the Government of the Republic of Korea and the Government of Canada on the Procurement of Telecommunications Equipment was terminated, effective September 1, 2005.

See [Contracting Policy Notice 2005-2](#)

Appendix Z – Reserved for future use.

Reserved for future use.

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