



# **Guide for Managers – Best Practices for Using Advance Contract Award Notices (ACANS)**

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# Guide for Managers - Best Practices for Using Advance Contract Award Notices (ACANS) (Revised January 2004)

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# 1. Background

## Introduction

The *Guide for Managers - Best Practices for Using Advance Contract Award Notices (ACANs)*, first published in late 2000, has been updated to:

- Provide managers the key considerations associated with using an ACAN process, including the procurement strategy and the documentation requirements;
- Re-orient the focus of ACANs for the supplier community so that suppliers have a better understanding of the government's requirements and can determine whether they possess the capabilities required to satisfy a given requirement;
- Underscore the fact that ACANs should only be used where valid statements of capabilities can be accepted; and
- Provide ACAN templates that will contribute to the improved quality of information in ACANs.

## Objectives

In keeping with the Treasury Board Contracting Policy, the objectives of the Advance Contract Award Notice <sup>[1]</sup> process are to:

- a. Provide a procurement process that is efficient and cost effective;
- b. Provide potential suppliers with the opportunity to demonstrate, by way of a statement of capabilities, that they are capable of satisfying the requirements set out in the ACAN; and
- c. Respect the principles of government contracting by enhancing access and transparency.

## Considerations

How a requirement should be sourced is one of a number of key considerations in determining the most effective and efficient procurement strategy for satisfying a requirement. In deciding on the appropriate sourcing method, contracting authorities should have a solid understanding of their program needs and should be able to clearly define the requirement and the elements deemed essential to satisfying that requirement.

The government achieves competitive contracting through three sourcing methodologies-electronic bidding through a full tendering process, traditional bidding using bidders lists, and ACANs <sup>[2]</sup>. ACANs are not to be used to circumvent electronic bidding or traditional bidding procedures when it is clear that more than one supplier exists that can perform the work proposed for a contract.

ACANs normally arise when it is possible that only one supplier can perform the work. In circumstances where detailed market knowledge confirms this as fact then the contract should be awarded on a non-competitive basis with transparency achieved through a contract award notice.

There are however circumstances where detailed knowledge of licensing arrangements is insufficient or where it is simply not possible to have certain market knowledge that an ACAN is an effective marketplace test.

An ACAN contrasts with non-competitive contracts in a number of ways:

- ACANs provide all suppliers with an opportunity to signal their interest in bidding, through a statement of capabilities.
- ACANs are posted for a minimum of 15 calendar days on the Internet on the government's electronic tendering service. The system operates 24 hours a day, seven days a week.
- ACAN open the process to additional electronic or traditional processes if a supplier's statement of capabilities is valid.

In the event that a statement of capabilities from a supplier is rejected, the decision to reject a supplier is impartial and independent in that it will not be made by the same officials who originally decided to proceed through the ACAN process.

The ACAN process requires that the proposed procurement meet one of the exceptions to soliciting bids identified in the *Government Contracts Regulations* (GCRs). If one or more trade agreements apply, the procurement **must also meet** one of the Limited Tendering reasons set out in the applicable trade agreements.

These exceptions 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:*
  - *\$25,000;*
  - *\$100,000 , where the contract is for the acquisition of architectural, engineering and other services required in respect of the planning, design, preparation or supervision of the construction, repair, renovation or restoration of work; or*
  - *\$100,000 where the contract is entered into by the member of the Queen's Privy Council for Canada responsible for the Canadian International Development Agency and is 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.*
- c. *The nature of the work is such that it would not be in the public interest to solicit bids.*

d. *Where only one supplier can do the work.*

Limited Tendering reasons under the trade agreements can be found in:

- a. North American Free Trade Agreement (NAFTA), Chapter 10, Article 1016
- b. World Trade Organization - Agreement on Government Procurement (WTO-AGP), Article XV
- c. Agreement on Internal Trade (AIT), Chapter 5, Article 506
- d. Canada-Korea Procurement of Telecommunications Equipment Agreement (CKTEA), Article XV.

Identification and use of the GCR exception and the limited tendering provisions of the trade agreements, where appropriate shall be fully and clearly justified in writing and documented on the procurement file, including the justification for why the particular supplier is the only supplier capable of fulfilling the requirement.

The following considerations are important to note:

- If the procurement is being set-aside under the Procurement Strategy for Aboriginal Business, statements of capabilities shall only be considered from Aboriginal suppliers. Refer to TB Contracting Policy Notice No. 1996-2 for additional information on the PSAB Policy.
- ACANs shall not be posted in situations where the contracting authority cannot accept a statement of capabilities or in solicitation processes where electronic or traditional bidding cannot be used. Examples where an ACAN should not be used include situations involving national security or extreme urgency brought on by unforeseeable circumstances, or where work has already begun. In such cases, the rationale underlying the decision not to publish an ACAN should be well documented on the procurement file.
- Advance Contract Award Notices must not be structured in a way that discourages submissions of statements of capabilities. For example, the notice should not say, "this is not a competitive solicitation", "this is a sole source requirement", or other language that is not consistent with the spirit of the Treasury Board Contracting Policy.

# 2. The ACAN Process

## Preparing an Advance Contract Award Notice

An ACAN must provide sufficient information in order to allow a supplier to determine if they possess the capabilities required to satisfy the government's requirements, and to permit the contracting authority to have an adequate basis for reviewing a potential supplier's statement of capabilities. Clear, unambiguous language should be used. Templates for ACANs related to goods and services can be found at Annexes A and B respectively.

An ACAN shall include, in both official languages, the following information:

1. The following introductory paragraph:

*The Department of (indicate the name of organization) has a requirement for the provision of (summarize the requirement). The purpose of this Advance Contract Award Notice (ACAN) is to signal the government's intention to award a contract for these goods and/or services (as applicable) to (name of supplier and address). Before awarding a contract, however, the government provides other suppliers with the opportunity to demonstrate that they are capable of satisfying the requirements set out in this Notice, by submitting a statement of capabilities during the fifteen calendar day posting period.*

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

*If no other supplier submits, on or before the closing date, a statement of capabilities meeting the requirements set out in the ACAN, a contract will be awarded to the pre-selected supplier.*

2. For goods requirements, a full description of the salient physical, functional, or other essential characteristics including performance requirements. Also refer



to a part number, model number and/or brand name if applicable. Include information on any optional items and/or optional quantities.

3. For services and construction requirements, a full description of the services to be provided, as well as the tasks to be performed, the objectives, expected results, performance standards, constraints (if any), and deliverables.
4. The required delivery date(s) or the period of the proposed contract, including options to extend the contract period.
5. A cost estimate of the proposed contract should be included, where appropriate, provided that it will not prejudice negotiations with the pre-selected supplier, or compromise the supplier's competitive position if a decision is made to proceed from the ACAN to electronic or traditional bidding.
6. The minimum essential requirements required to meet the requirement set out in the notice. Additional information is found in the templates.
7. The reason(s) for the proposed contract award, demonstrating why the pre-selected supplier has been identified as the only supplier capable of meeting the government's requirements, and linking the justification for directing the contract to the applicable exception to soliciting bids under the *Government Contracts Regulations* and, if applicable, the Limited Tendering provisions of the trade agreements.
8. Where intellectual property will be created during the course of the contract, a statement indicating that ownership of intellectual property will rest with the contractor or, if an exception is being invoked as set out in the Treasury Board's Policy on Title to Intellectual Property Arising under Crown Procurement Contracts, a statement identifying that the Crown will retain ownership of intellectual property, along with the reason for retaining ownership. The TB policy on intellectual property can be found at [/pubs\\_pol/dcgpubs/Contracting/tipaucpc-eng.asp](/pubs_pol/dcgpubs/Contracting/tipaucpc-eng.asp).

9. An explanation of how suppliers may proceed in responding to the ACAN, such as:

*Suppliers who consider themselves fully qualified and available to meet the specified requirements may submit a statement of capabilities in writing to the contact person identified in this Notice on or before the closing date of this Notice.*

*The statement of capabilities must clearly demonstrate how the supplier meets the advertised requirements.*

10. Where a procurement is being set-aside under the Procurement Strategy for Aboriginal Business (PSAB), the following statement:

*This requirement is set aside in accordance with the government's Procurement Strategy for Aboriginal Business. Only statements of capabilities from Aboriginal suppliers will be considered.*

11. The closing date for accepting statements of capabilities. Include the time of day as well as the Day, Month and Year, e.g. *1700 Eastern Standard Time, February 11, 2004.*
12. The name, title, address, phone, fax and e-mail address where suppliers may inquire or submit a statement of capabilities.
13. The applicability of NAFTA, WTO-AGP, AIT, and CKTEA.
14. The exception to the GCRs and, if applicable, the Limited Tendering reason from the applicable trade agreement(s).
15. If the goods, services or construction are for delivery to an area covered by a Comprehensive Land Claims Agreement. Refer to TB Contracting Policy Notice 1997-8 for additional information.

The ACAN templates for goods and for services (including construction) requirements are illustrative of the information that should be included in an ACAN. The applicable policy-related information regarding exceptions to soliciting bids under the *Government Contracts Regulations*, the Limited Tendering provisions under the various trade agreements, the Procurement Strategy for Aboriginal Business, and Comprehensive Land Claims Agreement(s), will now be included at the conclusion of the ACAN, as shown in the templates.

Some departments may have pre-established electronic templates. They should ensure that the policy fields in their templates are in keeping with this Guide. Irrespective of system used to complete an ACAN notice, contracting authorities should ensure that the narrative information included in the body of the ACAN is consistent with the policy information.

Contracting authorities should also be aware that the policy information that is reflected in the ACAN assists in the determination of the appropriate documentation that should be included on the procurement file.

## **Time Limits**

It is a policy requirement that ACANs shall be posted for no less than fifteen calendar days on the government's electronic tendering service. Where the ACAN is subject to NAFTA or the WTO-AGP, the fifteen calendar days shall commence on the date the ACAN is published in the Government Business Opportunities. Statements of capabilities from other potential suppliers must be submitted within the same fifteen calendar day posting period.

## **Amending an ACAN**

From time to time it may be necessary to amend an ACAN notice where additional information or clarification of the requirements is sought that was not specifically set out in the notice. Clarifications or additional information identified after the ACAN has been published should be provided equally to all interested suppliers. Extending the closing date would be appropriate in such cases.

## **Statements of Capabilities**

1. Statements of capabilities submitted by suppliers must:
  - a. Be provided in writing within the specified timeframe as indicated on the ACAN;  
and
  - b. Include documentation that clearly demonstrates that the supplier meets the requirements as set out in the Notice.

## **Principles for Reviewing a Supplier's Statement of Capabilities**

1. Where a statement of capabilities from one or more potential suppliers is received:
  - a. There shall be a fair review of all statement of capabilities. Where possible, the information should be reviewed by an individual who is independent of

the procurement process.

- b. Contracting authorities may request additional information from suppliers or third parties, as appropriate, to validate that the interested supplier has the capability to meet the requirements set out in the notice.

**2. With respect to statements of capabilities that are accepted:**

- a. If the statement of capabilities provides sufficient information to indicate that a supplier has the capability to meet the requirements, in order to award the contract, the department must advise the supplier in writing of the decision to accept its statement of capabilities and then proceed to either an electronic bidding process (supplemented by the Government Business Opportunities publication, where the procurement is subject to the NAFTA or the WTO-AGP), or to traditional bidding.
- b. Contracting officers are encouraged to notify the pre-identified supplier that a decision to accept a statement of capabilities has been taken and advise next steps.

**3. With respect to statements of capabilities that are not accepted:**

- a. The decision to reject a statement of capabilities will be impartial and independent and is not to be made by the same official(s) who originally decided to proceed through an ACAN process.
- b. The rationale for the decision to reject a statement of capabilities shall be documented on the procurement file.
- c. Suppliers should be advised in writing of the decision to reject a statement of capabilities before the contract is awarded.
- d. Debriefings should be offered to these suppliers.

**4. Where no statements of capabilities are submitted:**

If no supplier submits a statement of capabilities during the fifteen calendar day posting period, demonstrating that it meets the requirements set out in the ACAN, the contracting authority may proceed to issue a contract to the pre-selected supplier.

5. If the ACAN is cancelled, suppliers that submitted statements of capabilities should be notified.

6. The procurement file should fully document all decisions taken with regard to any statement of capabilities received and resultant changes in the procurement action.

## **Contracting Authority, Awarding a Contract**

Where a statement of capabilities has been accepted and the contracting authority proceeds to a full tendering process the ensuing contract shall be awarded using the authorities appropriate to the tendering process (electronic bidding or traditional competitive).

Where no statements of capabilities were received, or no valid statements were received, contracting authorities may use the electronic bidding authorities to award the contract.

The Treasury Board Contracts Directive ([http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/contracting/contractingpol\\_c-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/contracting/contractingpol_c-eng.asp)) lists the entry authorities delegated to contracting authorities. Contracts in excess of the departmental contracting limits must be submitted to Treasury Board for approval.

## **3. Reporting of Data**

Contracting authorities are to ensure that procurement information is included in the Purchasing Activity Report.

## **4. Implementation**

Departments and agencies should monitor the use of Advance Contract Award Notices to ensure that the policy is being followed and periodically audit their practices to ensure they are consistent with the Treasury Board Contracting Policy.

## **5. ACAN Documentation Checklist**

This checklist is illustrative of the type of documentation that should be included on the procurement file. This list will vary based on the department, type of requirement and whether a department is doing the contracting itself or through Public Works and Government Services Canada. Procurement files should contain, as appropriate:

- Specification or Statement of Work describing the goods, services or construction to be procured, including any options, as well as the delivery date or period of proposed contract and the estimated cost.
- The rationale for why the pre-selected supplier is deemed to be the only supplier capable of meeting the government's requirements.
- The relevant exception to soliciting bids under the GCRs. (Normally, only one supplier can perform the work.)
- The determination of the applicability of the trade agreements and, as applicable, the Limited Tendering reasons under the trade agreements.
- If national security or other circumstances exist that render it impossible for the government to consider statements of capabilities from other suppliers, the rationale underlying the decision not to proceed with an ACAN process.
- The determination of the applicability of the Procurement Strategy for Aboriginal Business.
- The determination of the applicability of the Comprehensive Land Claims Agreements.
- If applicable, the decision regarding ownership of intellectual property that will be created during the course of the contract.
- The MERX notice and, if applicable, the amended notice.
- Statements of capabilities:
  - *Accepted* - a copy of the letter advising them of the decision to accept the statement of capabilities and to proceed to a full tendering process.
  - *Rejected* - the rationale for rejecting the statement, and a copy of the letter to the supplier advising of the decision to reject its statement of capabilities.
- ACAN Cancellation:
  - the rationale for the cancellation.

- copies of letters sent to any suppliers that submitted statements of capabilities.
  - A copy of the Contract Award Notice.
  - The record of any debriefings given to suppliers.
- 

## Annex A - Template for Goods

*The Department of **(indicate name of organization)** has a requirement for the supply of **(summarize the requirement in one or two lines)**. The purpose of this Advance Contract Award Notice (ACAN) is to signal the government's intention to award a contract for these goods to **(indicate name of supplier and address)**. Before awarding a contract, however, the government would like to provide other suppliers with the opportunity to demonstrate that they are capable of satisfying the requirements set out in this Notice, by submitting a statement of capabilities during the 15 calendar day posting period.*

*If other potential suppliers submit a statement of capabilities during the 15 calendar day posting period that meet the requirements set out in the ACAN, the government will proceed to a full tendering process on either the government's electronic tendering service or through traditional means, in order to award the contract.*

*If no other supplier submits, on or before the closing date, a statement of capabilities meeting the requirements set out in the ACAN, a contract will be awarded to the pre-selected supplier.*

### Background

The Department of **(indicate name of organization)** has a requirement for the supply of quantity **x (describe the product, system, or equipment, e.g. software licenses, VHF communications system, fire fighting equipment...)**, in accordance with *(if applicable)* Standard/Specification/Regulation No. **x**. The product/system/equipment *(as applicable)* must **(describe the salient physical, functional or other essential characteristics, including performance criteria, and**

**any requirement to integrate with existing systems or equipment. Also refer to a part number, model number and/or brand name, if applicable, and add the words "or equivalent". Include information on any optional items and/or optional quantities).**

The product/system/equipment (*as appropriate*) is to be delivered by (***insert delivery date[s]***). If the contract includes optional quantities and/or optional goods, insert the delivery date (***e.g. within x days of exercising the option***).

The estimated value of the contract, including option(s), is (GST extra).

## **Minimum Essential Requirements**

Any interested supplier must demonstrate by way of a statement of capabilities that its product/equipment/system (*as appropriate*) meets the following requirements:

***(Summarize the essential functional characteristics or, if necessary to properly define the goods, the physical or design characteristics, and describe any requirements for interchangeability with existing systems or equipment. Also include to the extent possible performance or output criteria. If applicable, refer to recognized Canadian or international standards, specifications, and/or regulations).***

## **Justification for the Pre-Selected Supplier**

*This paragraph should provide the justification for why the pre-selected supplier's product/equipment/system (as appropriate) and the pre-selected supplier have been identified as the only product/equipment/system (as appropriate) and the only supplier capable of meeting the government's requirements, and link the justification to the applicable exception to soliciting bids under the Government Contracts Regulations and, if applicable, the Limited Tendering provisions of the trade agreements.*

Ownership of any Foreground Intellectual Property arising out of the proposed contract will vest in the Contractor.

**Or**



Canada intends to retain ownership of any Foreground Intellectual Property arising out of the proposed contract on the basis that the main purpose of the contract is ***(insert appropriate exception to the TB Policy on Title to Intellectual Property Arising under Crown Procurement Contracts, e.g. to generate knowledge and information for public dissemination)***

Suppliers who consider themselves fully qualified and available to meet the specified requirements may submit a statement of capabilities in writing to the Contracting Authority identified in this Notice on or before the closing date of this Notice. The statement of capabilities must clearly demonstrate how the supplier meets the advertised requirements.

***(If applicable)*** This requirement is set aside in accordance with the government's Procurement Strategy for Aboriginal Business. Only statements of capabilities from Aboriginal suppliers will be considered.

The closing date and time for accepting statements of capabilities is ***(date and closing time, e.g. February 11, 2004 2:00 p.m. EST)***.

Inquiries and statements of capabilities are to be directed to:

***(name and title of Contracting Authority)***

***(name and address of organization)***

Telephone:

Facsimile:

E-mail:

## **Policy Information**

*Indicate the applicability of the following policy requirements applicable to the ACAN process and provide the applicable sections as appropriate. Annex C, Applicable Statutory and Regulatory Requirements provides a cross reference to the applicable sections:*

\_\_\_ Government Contracts Regulations (GCRs) - \_\_\_ <sup>[3]</sup>

\_\_\_ Subject to WTO-AGP - \_\_\_

\_\_\_ Subject to NAFTA - \_\_\_

\_\_\_ Subject to AIT - \_\_\_

\_\_\_ Subject to CKTEA - \_\_\_

\_\_\_ Subject to Comprehensive Land Claims Agreement(s)

\_\_\_ Set-aside under the Procurement Strategy for Aboriginal Business

## Annex B - Template for Services (including construction)

*The Department of **(indicate name of organization)** has a requirement for the provision of **(summarize the requirement in one or two lines)**. The purpose of this Advance Contract Award Notice (ACAN) is to signal the government's intention to award a contract for these services to **(indicate name of supplier and address)**. Before awarding a contract, however, the government would like to provide other suppliers with the opportunity to demonstrate that they are capable of satisfying the requirements set out in this Notice, by submitting a statement of capabilities during the 15 calendar day posting period.*

*If other potential suppliers submit a statement of capabilities during the 15 calendar day posting period that meet the requirements set out in the ACAN, the government will proceed to a full tendering process on either the government's electronic tendering service or through traditional means, in order to award the contract.*

*If no other supplier submits, on or before the closing date, a statement of capabilities meeting the requirements set out in the ACAN, a contract will be awarded to the pre-selected supplier.*

### Background

The Department of **(indicate name of organization)** has a requirement to **(describe the services, e.g. provide architectural and engineering services, provide technical investigation and engineering services in support of...; conduct a study of x to**

***assess...; carry out a financial audit of x to determine...; develop an economic model to permit the analysis of...).*** The work will involve the following: ***(enumerate the tasks and describe the objectives, expected results, performance standards, constraints, and, to the extent possible, deliverables).***

The proposed contract is for a period of **x** years, from ***(insert estimated start date)*** to ***(insert estimated completion date)***. *If the contract includes an option to extend the contract period, insert the option information, e.g. two one-year periods;*

***Or***

*If the contract includes deliverables, state the date(s) that the deliverables are due.*

The estimated value of the contract, including the option period, is **\$x** (GST extra).

## **Minimum Essential Requirements**

Any interested supplier must demonstrate by way of a statement of capabilities that it meets the following requirements ***(this list should include those qualifications deemed essential in order to be able to carry out the work).***

- Experience, ***(e.g. x years experience in the past x years conducting y; x number of projects similar in size, scope and complexity)***
- Knowledge and understanding of ***(e.g. x equipment; x economic model; x software)***
- Academic qualifications, ***(e.g. must possess an undergraduate degree from a recognized university in the field of [e.g. business, political science]);***
- Professional designation, accreditation, and/or certification ***(e.g. professional engineer, Certified General Accountant)***

## **Justification for the Pre-Selected Supplier**

*This paragraph should provide the justification for why the pre-selected supplier has been identified as the only supplier capable of meeting the government's requirements, and link the justification to the applicable exception to soliciting bids under the Government Contracts Regulations and, if applicable, the Limited Tendering provisions of the trade agreements.*

Ownership of any Foreground Intellectual Property arising out of the proposed contract will vest in the Contractor.

***Or***

Canada intends to retain ownership of any Foreground Intellectual Property arising out of the proposed contract on the basis that the main purpose of the contract is ***(insert appropriate exception to the TB Policy on Title to Intellectual Property Arising under Crown Procurement Contracts, e.g. to generate knowledge and information for public dissemination)***

Suppliers who consider themselves fully qualified and available to meet the specified requirements may submit a statement of capabilities in writing to the Contracting Authority identified in this Notice on or before the closing date of this Notice. The statement of capabilities must clearly demonstrate how the supplier meets the advertised requirements.

***(If applicable)*** This requirement is set aside in accordance with the government's Procurement Strategy for Aboriginal Business. Only statements of capabilities from Aboriginal suppliers will be considered.

The closing date and time for accepting statements of capabilities is ***(date and closing time, e.g. February 11, 2004 2:00 p.m. EST)***.

Inquiries and statements of capabilities are to be directed to:

***(name and title of Contracting Authority)***

***(name and address of organization)***

Telephone:

Facsimile:

E-mail:

## **Policy Information**

*Indicate the applicability of the following policy requirements applicable to the ACAN process and provide the applicable sections as appropriate. Annex C, Applicable Statutory and Regulatory Requirements provides a cross reference to the applicable*

sections:

\_\_\_ Government Contracts Regulations (GCRs) <sup>[4]</sup> - \_\_\_

\_\_\_ Subject to WTO-AGP - \_\_\_

\_\_\_ Subject to NAFTA - \_\_\_

\_\_\_ Subject to AIT - \_\_\_

\_\_\_ Subject to CKTEA - \_\_\_

\_\_\_ Subject to Comprehensive Land Claims Agreement(s)

\_\_\_ Set-aside under the Procurement Strategy for Aboriginal Business

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## Annex C - Applicable Statutory and Regulatory Requirements

**This annex provides a cross reference to the applicable statutory and regulatory requirements applicable in the ACAN process and can be used to complete the ACAN template based on the nature of the requirements identified in the individual procurements.**

### ***1. Applicable Exceptions to Soliciting Bids under the Government Contracts Regulations (GCRs) (Section 6):***

A contracting authority may enter into a contract without soliciting bids where:

- 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
  - i. \$25,000,
  - ii. \$100,000, where the contract is for the acquisition of architectural, engineering and other services required in respect of the planning, design, preparation or supervision of the construction, repair, renovation or restoration of a work, or

- iii. \$100,000, where the contract is to be entered into by the member of the Queen's Privy Council for Canada responsible for the Canadian International Development Agency and is 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;
- c. the nature of the work is such that it would not be in the public interest to solicit bids; or
- d. only one person is capable of performing.

Contracting officials are reminded that the use of the ACAN process requires the identification and appropriate justification of the reasons to set aside the full tendering process.

## ***2. Applicable Limited Tendering Provision under WTO-AGP (Article XV.1)***

XV.1(a) - protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists

XV.1(b) - extreme urgency brought about by unforeseeable events

XV.1(c) - additional deliveries by the original supplier intended either as parts replacement for existing supplies, or installations, or the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services

XV.1(d) - prototype or a first product or service developed for a particular contract for research, experiment, study or original development

XV.1 (e) - additional construction services not included in the initial contract but within the objectives of the original solicitation through unforeseeable circumstances necessary to complete the construction services described therein, and the entity 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 cause significant inconvenience to the entity. 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

XV.1 (f) - for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services

XV.1 (g) - product purchased on a commodity market

XV.1 (h) - exceptionally advantageous conditions which only arise in the very short term

XV.1 (i) - in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners

### ***3. Applicable Limited Tendering Provision under NAFTA (Article 1016.2)***

1016.2(a) - in the absence of tenders in response to an open or selective call for tenders, 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 tenders submitted come from suppliers that do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

1016.2(b) - where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

1016.2(c) - extreme urgency brought about by unforeseeable events

1016.2(d) - 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 entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;

1016.2(e) - where an entity 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. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be subject to Articles 1008 through 1015. Original development of a first good may include limited production in order 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;

1016.2(f) - goods purchased on a commodity market;

1016.2(g) - exceptionally advantageous conditions that only arise in the very short term

1016.2(h) - winner of an architectural design contest, on condition that the contest is organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest, organized with a view to awarding the design contract to the winner,



and to be judged by an independent jury; and where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest

#### **4. *Applicable Limited Tendering Provision under AIT (Article 506.12)***

506.12(a) - to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative

506.12(b) - where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists

506.12(c) - for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly

506.12(d) - purchase of goods on a commodity market

506.12(e) - work to be performed on or about a leased building or portions thereof that may be performed only by the lessor

506.12(f) - 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

506.12(g) - winner of a design contest

506.12(h) - prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases

506.12(i) - purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases

506.12(j) - original works of art

506.12(k) - subscriptions to newspapers, magazines or other periodicals

506.12(l) - procurement of real property.

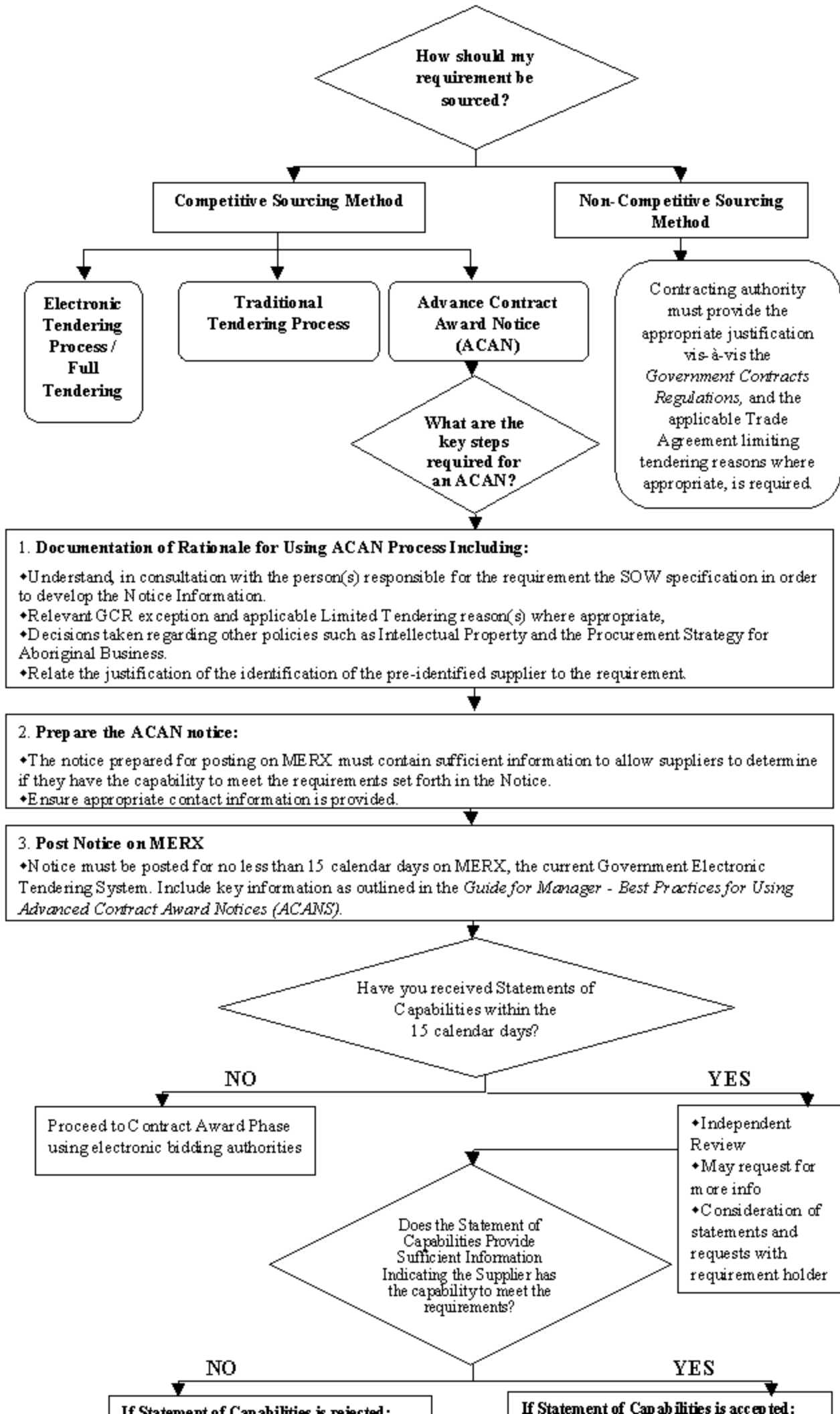
### **5. *Applicable Limited Tendering Provisions under CKTEA (same references as WTO-AGP)***

- Protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists
- Extreme urgency brought about by unforeseeable events
- Additional deliveries by the original supplier intended either as parts replacement for existing supplies, or installations, or the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services
- Prototype or a first product or service developed for a particular contract for research, experiment, study or original development
- Additional construction services not included in the initial contract but within the objectives of the original solicitation through unforeseeable circumstances necessary to complete the construction services described therein, and the entity 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 cause significant inconvenience to the entity. 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
- For new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services
- Product purchased on a commodity market

- Exceptionally advantageous conditions which only arise in the very short term
  - In the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners
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## **Annex D - Using Advance Contract Awards Notices**

### **Figure 1: Using Advance Contract Awards Notices**



**If Statement of Capabilities is rejected:**

- ♦ Advise supplier (s) in writing
- ♦ Debriefing to suppliers available on request
- ♦ Once supplier has been informed of decision, award the contract using electronic bidding authorities

**If Statement of Capabilities is accepted:**

- ♦ Advise the supplier (s) in writing of acceptance and next steps
- ♦ Cancel the ACAN
- ♦ Proceed to either a Full Tendering Electronic Bidding Process or Traditional Tendering Process

1 The decision to reject a supplier's statement of capabilities will be not be made by the same official(s) who originally decided to proceed through an ACAN process.

2 An ACAN is a competitive electronic bidding sourcing methodology.

▼ Figure 1 - Text version

Annex D shows a flowchart for "Using Advance Contract Awards Notices".

The chart starts by questioning "How should my requirement be sourced?" for which two options are provided: competitive sourcing method and non-competitive sourcing method. The competitive sourcing method shows three options; electronic tendering process/full tendering, traditional tendering process and advance contract award notice (ACAN). Under ACAN is a question "What are the key steps required for an ACAN?" The chart outlines 3 steps;

1. Documentation of rationale for using ACAN process including; understand, in consultation with the person(s) responsible for the requirement the SOW specification in order to develop the Notice Information; relevant GCR exception and applicable Limited Tendering reason(s) where appropriate, decisions taken regarding other policies such as Intellectual Property and the Procurement Strategy for Aboriginal Businesses and relate the justification of the identification of the pre-identified supplier to the requirement;
2. Prepare the ACAN notice: The notice prepared for posting on MERX must contain sufficient information to allow suppliers to determine if they have the capability to meet the requirements set forth in the Notice. Ensure appropriate contract information is provided.
3. Post Notice on MERX: Notice must be posted for no less that 15 calendar days on MERX, the current Government Electronic Tendering System. Include key information as outlined in the Guide for Manager - Best Practices for Using Advanced Contract Award Notices (ACANS).

The chart then asks "Have you received Statements of Capabilities within the 15 calendar days?" If the answer is No, proceed to Contract Award Phase using electronic bidding authorities.

If the answer is yes, the chart itemizes independent review, may request for more info, consideration of statements and request with requirement holder. The Yes box questions "Does the Statement of Capabilities provide sufficient information indicating the supplier has the capability to meet the requirement? If no (If the Statement of Capabilities is rejected); advise supplier(s) in writing, debriefing to suppliers available on request, once supplier has been informed of decision, award the contract using electronic bidding authorities.

If yes (If Statement of Capabilities is accepted): advise the supplier(s) in writing of acceptance and next steps, cancel the ACAN, proceed to a full tendering, electronic bidding process or traditional tendering process. The chart specifies that the decision to reject a supplier's statement of capabilities will not be made by the same official(s) who originally decided to proceed through an ACAN process. An ACAN is a competitive electronic bidding sourcing methodology.

1 The definition of an Advance Contract Award Notice can be found in Appendix A of the Treasury Board Contracting Policy at [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/Contracting/contractingpol\\_a-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_a-eng.asp)

2 An ACAN is an electronic bidding sourcing methodology.

3 Identification of the applicable GCR exception is a mandatory policy requirement.

4 Identification of the applicable GCR exception is a mandatory policy requirement

**Date modified:**

2004-04-13