



# **Contracting Policy Notice 2011-3 – Amendments to the Government Contracts Regulations (Archived)**

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October 4, 2011

To: Functional Heads, Finance and Administration of all Departments and Agencies

From: Executive Director, Investment Planning, Project Management and Procurement Policy Directorate

# **Subject: Amendments to the Government Contracts Regulations**

## **Contracting Policy Notice 2011-3**

The Governor in Council has approved the *Regulations Amending the Government Contracts Regulations* that will impact contracts entered into within your organization. These amendments came into force on September 22, 2011. They are based upon a commitment in the Federal Accountability Action Plan to include integrity provisions in all government contracts.

The amendments accomplish this objective by deeming certain clauses in construction, goods or services contracts even if the clauses are not explicitly written in the solicitation or the contract. These new deemed clauses apply to bidders and contractors, not government officials, and:

- Prohibit the payment of contingency fees to consultant lobbyists,
- Declare that the bidder has not been convicted of certain criminal offenses,
- Provide the contractor's consent to publicly disclose basic information about a procurement contract, and
- Require a contractor to return any advance payments and provide the contractor's consent that the government may cancel the contract in the event of non-compliance with a deemed term.

It is a best practice to also incorporate the deemed terms into written contracts, for extra clarity.

In addition, the Regulations made a number of technical amendments as follows:

- Extended the definition of "contracting authority" to include both individuals who are authorized under various laws to enter into contracts and departments that have the authority to enter into contracts on their own (instead of on behalf of the Crown) and exempted commissions of inquiry, the staffs of the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer and the Office of the Conflict of Interest and Ethics Commissioner;
- Removed the definition of "contract";
- Replaced the term "on behalf of Her Majesty" with "provide for the payment of any money by Her Majesty";
- Removed the National Capital Commission (NCC (National Capital Commission)) from the GCRs (Government Contracts Regulations);
- Replaced the term in French for legal services as follows "la prestation de services juridiques";
- Replaced the reference to the *Federal Real Property Act* with the *Federal Real Property and Federal Immovables Act*; and
- Exempted Agents of Parliament, the Director of Public Prosecutions and the Communications Security Establishment Commissioner from the requirement to engage legal services under the authority of the Minister of Justice to enter into a contract for legal services.

The deemed terms and technical amendments should not substantially change the procurement practices in departments. For example, Appendix M of the Contracting Policy already prohibits the payment of contingency fees to consultant lobbyists, so the effect of the amendments to the *Government Contracts Regulations* will be to convert a policy requirement into a regulatory one.

The deemed clauses are set out in the *Government Contracts Regulations* as follows:

18. (1) The following terms are deemed to be expressly set out in every construction, goods or service contract that provides for the payment of any

money by Her Majesty:

- a. the contractor declares that the contractor has not, directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the contract if the payment of the fee would require the individual to file a return under section 5 of the Lobbying Act;
- b. all accounts and records relating to any payment by the contractor of fees or other compensation for the solicitation, negotiation or obtaining of the contract shall be subject to any accounting and auditing provisions of the contract;
- c. the contractor declares that the contractor has not been convicted of an offence, other than an offence for which a pardon has been granted, under section 121, 124 or 418 of the Criminal Code;
- d. the contractor consents, in the case of a contract that has a value in excess of \$10,000, to the public disclosure of basic information — other than information described in any of paragraphs 20(1)(a) to (d) of the Access to Information Act — relating to the contract; and
- e. if the contractor makes a false declaration under paragraph (a) or (c) or fails to comply with the terms set out in paragraph (b) or (d), it is an act of default under the contract and the contractor agrees, in addition to any other remedies that may be available against the contractor, to immediately return any advance payments and agrees that the contracting authority may terminate the contract.

(2) The following terms are deemed to be expressly set out in every bid solicitation for a construction, goods or service contract that provides for the payment of any money by Her Majesty:

- a. the bidder declares that the bidder has not, directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay, a contingency fee to any individual for the solicitation, negotiation or obtaining of the contract if the payment of the fee would require the individual to file a return under section 5 of the Lobbying Act; and

- b. the bidder declares that the bidder has not been convicted of an offence referred to in paragraph (1)(c), other than an offence for which a pardon has been granted.

For your information, the *Financial Administration Act* already includes the following two deemed terms:

40. (1) It is a term of every contract providing for the payment of any money by Her Majesty that payment under that contract is subject to there being an appropriation for the particular service for the fiscal year in which any commitment under that contract would come in course of payment.
- (2) It is a term of every contract for public opinion research entered into by any person with Her Majesty that a written report will be provided by that person.

For additional details about these changes, please read the Regulatory Impact Analysis Statement available at <http://www.canadagazette.gc.ca/>.

Departments are expected to rely on existing reference levels to implement and apply these regulatory changes.

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## **Enquiries**

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