



Contracting Policy Notice 2023-4: Exceptional Contracting Limit for Sustained Emergencies of National Importance for Public Services and Procurement Canada and Shared Services Canada

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Contracting Policy Notice 2023-4: Exceptional Contracting Limit for Sustained Emergencies of National Importance for Public Services and Procurement Canada and Shared Services Canada

Date: July 9, 2023

To: Senior Designated Officials for Procurement and Functional Heads of Procurement, Administration and Finance units at all departments

Subject: Exceptional contracting limit for sustained emergencies of national importance for Public Services and Procurement Canada (PSPC) and Shared Services Canada (SSC)

Overview

Building upon the lessons learned during the COVID-19 pandemic and the need to remain responsive to urgent and critical situations as they arise, Treasury Board has approved a new emergency response framework that

includes an exceptional contracting limit for PSPC and SSC, as common service providers for the Government of Canada. The framework will address sustained emergencies of national importance (SENIs).

This new exceptional limit will have no impact on the ability of departments to enter into emergency contracts using their existing emergency contracting limits.

Sustained emergencies of national importance

Section A.2 in Appendix A of the *Directive on the Management of Procurement* has been amended to add a new exceptional contracting limit for SENIs that is subject to approval and any associated conditions set by the President of the Treasury Board.

Guided by the definitions in the *Emergencies Act*, an exceptional contracting limit for SENIs would be for national emergencies where an urgent and critical situation either:

- seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity of departments to implement the plan to address the emergency, or
- seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

It is expected that the exceptional contracting limit for SENIs would be used in rare circumstances. The exceptional limit is specifically designed for the emergencies articulated above that would meet the following four criteria:

1. have a pan-Canadian impact
2. likely require a coordinated multi-departmental approach to acquire goods and services

3. likely be accompanied by a triggering event (such as a pandemic, a declaration of war, or a declaration of a state of emergency)
4. exceed the capacity of public institutions to respond using existing emergency and exceptional authorities due to the complexity and evolving nature of the emergency over a prolonged period

The sustained element is one of the characteristics that distinguishes this exceptional contracting limit from the departmental emergency limits set out in section A.3 of Appendix A of the directive. There is no minimum amount of time for an emergency to become a sustained emergency; it is when the four aforementioned criteria are met.

The use of the exceptional contracting limit for SENIs does not require invoking the *Emergencies Act* and the invocation of the *Emergencies Act* does not necessarily mean that the exceptional contracting limit for SENIs would be required.

Use of the exceptional contracting limit for SENIs

If the minister or ministers responsible for PSPC or SSC are not able to implement the government's response to an emergency that meets the criteria of a SENI within their current authorities, they can make a written request to the President of the Treasury Board to reduce the administration associated with large contracts.

To support a decision by the President, the minister's request would be expected to include:

- the rationale for seeking an exceptional contracting limit for a SENI
- an indication of the value and volume of contracts
- details of consultations with other jurisdictions (if applicable)

- the expected duration of the SENI

All requests to approve the use of the exceptional contracting limit for SENIs must include, at minimum, the following information:

- **An expiry date:** The use of the exceptional contracting limit for SENIs would have an expiry date that would not exceed a year. Extensions to the use of the exceptional contracting limit could only be granted through a subsequent request to the President of the Treasury Board
- **Reporting requirements:** The approval would define the nature and frequency of reporting to allow the Treasury Board of Canada Secretariat (TBS) oversight over contracts undertaken under the exceptional authority for SENIs, including that the contracts are related to facilitating a response to the emergency. In addition, the reporting requirements will include, at the minimum at the end of the final expiry of the exceptional contracting limit for SENIs, a report by PSPC or SSC. The report would set out the lessons learned to help inform any adjustments needed to the exceptional contracting limit for SENIs or any guidance for future responses to a SENI

In reviewing the request, the President of the Treasury Board would be supported by officials at TBS and would have the flexibility to engage any other minister or body (such as a Cabinet committee) that the President sees fit. The President would inform the minister making the request in writing and include any conditions on the use of the exceptional contracting limit for SENIs. The President would then inform the other Treasury Board ministers of any decision to approve the use of the exceptional authority for SENIs.

Approval of a request from the minister responsible for PSPC or SSC would provide authority for the minister of PSPC or SSC to:

- enter into contracts of unlimited value in response to the SENI
- indemnify or limit contractor liability and issue advance payments that cross fiscal years for contracts related to a SENI

TBS will develop and distribute further guidance.

Enquiries

Questions about this policy notice should be directed to [TBS Public Enquiries](#).

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