



Guide on the Exceptional Contracting Limit for Sustained Emergencies of National Importance

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soutenues d'importance nationale

Guide on the Exceptional Contracting Limit for Sustained Emergencies of National Importance

1. Who is this document for?

This guide is primarily for Contracting Authorities at Public Services and Procurement Canada (PSPC) and Shared Services Canada (SSC) who need to enter into high dollar-value contracts in response to a Sustained Emergencies of National Importance (SENI). In the event of a SENI, this guide may be useful for managers in all departments and officials at the Treasury Board of Canada Secretariat. This limit was announced in [Contracting Policy Notice 2023-04: Exceptional Contracting Limit for Sustained Emergencies of National Importance for Public Services and Procurement Canada and Shared Services Canada](#).

This guide explains what a SENI is and how to get approval to use the SENI exceptional contracting limit as set out in Appendix A of the [Directive on the Management of Procurement](#).

In addition, this guide explains the process that may be used for reporting on the use of this exceptional contracting limit.

The COVID-19 pandemic revealed that the emergency contracting framework did not adequately support a pan-Canadian emergency of that scope and duration.

In the event of a similar SENI, the Treasury Board has established a response framework that includes an exceptional contracting limit (SENI limit) for PSPC and SSC as common service providers for the Government of Canada.

The SENI limit enables contracting authorities in PSPC and SSC, without Treasury Board approval, 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

When the President of the Treasury Board approves the use of the SENI limit, they may set conditions on its use.

2. What is a SENI and what criteria would the President of the Treasury Board consider when they are asked to approve the use of the SENI limit?

A SENI is an emergency that occurs only in rare circumstances. A SENI poses threats to public health, society, safety, and the economy. During a SENI, the government needs the capability and flexibility to take rapid actions to respond to a prolonged and evolving crisis.

The President of the Treasury Board would consider the following criteria when asked to approve the use of the SENI limit:

- a. The emergency either:
 - seriously endangers the lives, health, or safety of Canadians or
 - seriously threatens the ability of the Government of Canada to preserve the sovereignty, security, public order, or

territorial integrity of Canada

b. The emergency would also:

- have a pan-Canadian impact
- require a coordinated multi-departmental approach to acquire goods and services
- be accompanied by a triggering event (such as a pandemic, a declaration of war, or a declaration of a state of emergency)
- 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
- be sustained (while there is no minimum amount of time for an emergency to be considered a sustained emergency, the term “sustained” refers to the emergence of new, distinct, and unforeseen requirements as the emergency progresses)

Note: The use of a SENI limit **does not** require a declaration under the *Emergencies Act*. In addition, a declaration under the *Emergencies Act* does not require that the SENI limit be requested or used.

See [Appendix A: Examples of a SENI](#) in this document for examples of potential scenarios where a SENI limit could be approved.

3. How can I request approval to use the SENI limit?

Only the minister responsible for PSPC or SSC can request approval to use the SENI limit when their department is unable to implement the government’s response to a SENI within their current authority.

The request should be in the form of a written letter.

To support a decision by the President, the minister's written request should include at minimum:

- an indication of the value of the contracts that may be entered into using the SENI limit
- details of consultations with other jurisdictions (if applicable)
- the requested effective period for the SENI limit (along with a detailed justification if the request is for more than one year)

The President of the Treasury Board does not approve whether there is an emergency. Instead, the President can approve the use of the SENI limit by the minister responsible for PSPC or SSC.

See [Appendix B: Steps to seek approval for a SENI limit](#) in this document for additional information.

4. When will I know if the request for a SENI limit is approved?

As part of their review of a request to use the SENI limit, the President of the Treasury Board would be supported by officials at the Treasury Board of Canada Secretariat (TBS). In addition, the President may engage any other ministers, body (such as a Cabinet committee), or experts that the President sees fit. Timing will be determined by the nature of the emergency and the extent of the consultations.

The President will communicate their decision in a written response to the requesting minister and include the following conditions:

- **The effective period of the approval**, noting that extensions can be granted based upon a subsequent written request.
- **Contract reporting**, including the frequency of reports, is to be provided to the Assistant Secretary, Government Operations, and

that the reports are to include the information in Appendix C.

- **Lessons learned report** is to be provided to Assistant Secretary, Government Operations Sector within three months after the expiry of the SENI limit, including any extensions, and that they include the information set out in Appendix D. The purpose of this report is to help inform any adjustments that may be needed to the SENI limit or to this guidance.

The President may set other conditions.

5. What contracting requirements still apply during a SENI?

During a SENI, all departments remain responsible for fulfilling legal and policy responsibilities, including but not limited to:

- sound stewardship of public resources
- security requirements
- official languages
- the integrity of suppliers
- respect for Indigenous rights
- properly invoking any applicable trade or policy exceptions (for example, trade agreements generally include exceptions related to public safety, national security, and extreme urgency)

The use of the SENI limit does not remove these obligations.

During a SENI, all departments are required to be responsive within a responsible timeframe for due diligence and for controlling public expenditures. As required by the *Directive on the Management of Procurement*, the circumstances, rationale, and process for decision-making must be well documented to ensure proper accounting for the decisions

made during the SENI, including any non-standard applications of Treasury Board policy. This information will facilitate the work of oversight bodies such as the Office of the Auditor General.

All departments are reminded that, in accordance with the *Access to Information Act* and the [Guide to the Proactive Publication of Contracts](#), contracts over \$10,000 must continue to be proactively published during a SENI. Departments are expected to be as transparent as possible without compromising national security or personal information.

6. What is required for SENI contract reporting?

PSPC or SSC should expect to provide TBS with a report on their use of the SENI limit every six months, unless otherwise decided by the President.

Depending on the SENI, further details about what data elements to use, the format of the report, and the reporting frequency may be set out in the President's response. These requirements may be provided or modified by the Secretary of the Treasury Board.

See [Appendix C: Data elements for SENI contract reporting](#) in this document for additional information.

7. What is required for the lessons learned report?

The purpose of the lessons learned report is to analyze how PSPC or SSC has used the SENI limit, which will inform future SENI responses and potential adjustments to the limit or the guidance.

This report should consider the broader scope of the emergency period with respect to contracting authorities. This may include how the evolution of the emergency situation contributed to any changes in the volume or

value of contracts entered into by either PSPC, SSC, or client departments throughout the SENI period.

The report should also state whether PSPC or SSC would require similar authorities in the future or whether internal improvements in capacity and familiarity with expedited procurement processes decreased the ongoing need for higher-dollar value emergency procurements in response to the SENI.

Contracting data, including the number of contracts entered into by the department under the SENI limit that exceeded their basic contracting limits as set out in Appendix A.1 of the [*Directive on the Management of Procurement*](#), should be provided as part of the report package.

See [Appendix D: Lessons learned report](#) for the elements that PSPC or SSC would be expected to provide in a lessons learned report.

8. How do I seek an extension of a SENI limit?

Extensions to the use of the SENI limit may be approved through a subsequent written request to the President of the Treasury Board from either the minister responsible for PSPC or SSC.

The request should be submitted no later than one month before the expiration of the SENI limit to ensure no lapse or break in authority.

An extension request should include:

- a rationale outlining that the government's response to the emergency continues to necessitate the use of the SENI limit
- the period of the extension being sought
- a description of the anticipated goods or services that will be contracted for

- why the use of the SENI limit will be needed to complete these procurements

This process will also provide an opportunity to review the progress of the emergency and the appropriateness of extending the SENI limit or allowing it to expire.

9. Can a contractor's liability be limited under a SENI?

Yes. Under the existing provisions in the [Directive on the Management of Procurement](#), PSPC and SSC have the authority to limit contractor liability, including indemnifying contractors from risk within their control in a pressing emergency contracting situation with the chief financial officer's (CFO) approval.

10. Can a department exceed its voted appropriations during a SENI?

No. However, if the department does not have enough incremental funding, the President of the Treasury Board has the delegated authority to allocate funding from the Treasury Board Central Vote to support urgent and unforeseen cash requirements associated with a SENI. This would remove the immediate need for revised Estimates to be approved.

To request access to Treasury Board Vote 5, the CFO of the organization seeking such funds should include the following in a written request to the Secretary for consideration by the President of the Treasury Board:

- an indication of support from their responsible Minister
- the amount of Treasury Board Vote 5 access being sought
- the approved source of funds to support the request

- a supporting rationale to demonstrate the organization will not have sufficient voted authorities to meet contracting requirements (cash flow for the vote from which payments will be made to PSPC or SSC, for example)
- the plan to seek eventual Treasury Board and Parliamentary approval of funds to repay the Treasury Board Vote 5 allocation should a valid supply authority from Treasury Board not yet exist
- an indication of risks, outstanding approvals or any other considerations that may be appropriate to flag

If a department foresees that it will need additional funding at the outset, the above information should be included in the letter requesting approval to use the SENI limit. This information should be in an attachment to the letter with a certification by the organization's CFO that no other funds are available.

If the request for additional funding is for a department other than PSPC or SSC, the request should be submitted separately to TBS.

The President has the delegated authority to include an item in the Estimates to support the repayment of a Treasury Board Vote 5 request for a SENI should no pre-existing authority be in place.

11. What requirements apply to the reporting of lessons learned after the use of the SENI limit is approved?

The lessons learned report should include the elements listed in Appendix D of this guide.

12. Who can I contact if I have questions?

Further questions can be directed to the [Treasury Board of Canada Secretariat Public Enquiries](#).

Note: If regular contact methods are not possible due to the nature of the SENI, use the continuity of government process for your department.

Appendix A: Examples of a SENI

The SENI exceptional limit will be used only in rare circumstances. A SENI is a situation of such a size, scope, and duration that it poses a threat to all Canadians in terms of public health, society, safety, and the economy.

The following are examples of potential scenarios where invoking the SENI limit could be appropriate:

- **Public order emergency** that arises from threats to the security of Canada and that is so serious as to be a national emergency.
- **International emergency** involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that is so serious as to be a national emergency.
- **War emergency** involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence that is so serious as to be a national emergency.
- **Public welfare emergency** caused by a real or imminent (a) fire, flood, drought, storm, earthquake, or other natural phenomenon, (b) disease in human beings, animals, or plants, or (c) accident or pollution and that results or may result in a danger to life or property, social disruption, or a breakdown in the flow of essential

goods, services or resources, so serious as to be a national emergency.

Specific examples include:

- Political emergencies such as a war on Canada or one of its allies, a coup or civil insurrection
- Critical health or immediate environmental emergencies such as a global pandemic with characteristics like the COVID-19 pandemic or a Canada-wide food safety or scarcity emergency
- Natural or manmade disasters including flooding, fires, tsunamis, contamination, or a catastrophic earthquake that is beyond the capacity of a province, such as an earthquake that devastates a large region
- Critical security emergencies such as a terrorist attack, serious crime or a cyberattack that incapacitates essential public infrastructure including internet, water, hospitals, and access to financial networks

Examples of emergencies that are not a SENI include:

- any emergency that can be addressed through existing measures
- seasonal influenza
- international conflict or war that may create an urgent pressure in Canada but does not threaten Canada or endanger Canadians domestically
- a successful cyberattack on a department (such as ransomware) or on a part of public infrastructure

Appendix B: Steps to seek approval for a SENI limit

The steps to request approval to use the SENI limit by the President of the Treasury Board should include the following:

1. The minister responsible for PSPC or SSC determines that their department is unable to carry out the federal government's response to the SENI without relief from the applicable basic, exceptional, and emergency contracting limits.

To respond to the SENI, either minister may make a request in writing to the President of the Treasury Board with a copy to the Assistant Secretary, Government Operations Sector (GOS), the Comptroller General of Canada, and, if funding from Treasury Board Vote 5 is requested, the Assistant Secretary, Expenditure Management Sector (EMS). In assessing the need for and formulating the request, it is a best practice for PSPC or SSC to collaborate with the Assistant Secretary of GOS at the TBS.

If a department other than PSPC or SSC requests additional funding from Treasury Board Vote 5, in addition to the process in this guidance, they should provide a copy of the request letter to the appropriate Assistant Secretary for the department.

For additional information on access to Vote 5, refer to the section [Can a department exceed its voted appropriations during a SENI?](#)

2. All written requests for approval to use the SENI limit should include the following information.
 - Description of why the situation is an urgent, critical, and sustained emergency, including how it is currently or projected to broadly impact most Canadians.
 - An estimate of the number and value of contracts that have been entered into for departments or that are soon

expected to be entered into, and why they will exceed the existing contracting limits of PSPC or SSC.

- A summary of any consultations with departments and potentially with other jurisdictions (for example, provinces experiencing an emergency that has exceeded their capacity or authority to manage it and has requested support).
- An estimate of how long the SENI limit will be required, recognizing that there is no minimum amount of time for an emergency to become a sustained emergency.

If applicable, provide an assessment of the necessity for Limitation of Liability (LOL) and advance payments, alongside a corresponding request for their use in response to the SENI and confirm that the CFO will approve contracts with LOL or advance payments. Normally, the CFO of the client department would provide this approval, but it may be approved by the CFO of PSPC or SSC, depending upon the circumstances.

3. If applicable, a request from the CFO of the organization seeking access to Treasury Board Vote 5, Government Contingencies. For more information, see the section [Can a department exceed its voted appropriations during a SENI?](#)

Steps to preparing the President's approval to use the SENI limit

1. Request: In reviewing the request, the President of the Treasury Board would be supported by officials in TBS. The President would consult with the Assistant Secretary of GOS.

If a request for funding from the Treasury Board Vote 5 is made by a department other than PSPC or SSC, the steps regarding the Assistant

Secretary of GOS would apply, instead to the applicable Assistant Secretary for that department.

2. TBS review: The Assistant Secretary of GOS would consult relevant Policy and Program Sectors as needed based on the requested authorities to develop a recommendation to the President, including the Assistant Secretary of EMS if Treasury Board Vote 5 is requested.

The TBS recommendation should identify any known risks that have been identified by the Department of Justice Canada.

The Assistant Secretary would communicate the recommendation to the Secretary of the Treasury Board and provide a draft reply for the President to send to the requesting minister.

3. Approval: The Secretary of the Treasury Board or the Assistant Secretary of GOS would forward the recommendation to the President of the Treasury Board.

If the recommendation is approved, the President would send a written reply that includes any conditions (such as, expiry date and scope) on the use of the SENI limit.

If the recommendation is not approved by the President, the Assistant Secretary of GOS would communicate this decision to the department.

Under normal circumstances, the letter would be delivered electronically. However, if the nature of the emergency does not allow the letter to be delivered electronically, the written response could be delivered in a printed format.

4. Response: The President would be expected to inform the other Treasury Board ministers of any decision to invoke the use of the SENI limit.

For record-keeping purposes, a copy of the exchange of correspondence would be shared with TBS, including relevant Program and Policy Sector assistant secretaries, the Comptroller General of Canada and the Assistant Secretary of EMS.

Appendix C: Data elements for SENI contract reporting

When a SENI contracting report is a condition set by the President, the report should be consolidated and include the following for each contract.

1. Procurement identification number and contract number
2. Vendor name
3. Contracting Authority's name
4. Contract award date
5. Contract period end date or delivery date
6. Total contract value
7. Original contract value
8. Contract amendment value
9. Option value
10. Commodity type
11. Commodity code
12. Commodity code description
13. Brief contract description
14. Competitive or non-competitive
15. If not competitive, explain the reason(s) why bids were not solicited
16. Instrument type (for example, contract or legally non-binding agreement)
17. Pressing emergency rationale
18. Any significant additional financial details

19. Any significant limitation of liability or indemnification details
20. Senior financial officer sign-off from the funding department
21. Name of organization entering into the contract and the name of the client organization
22. List of any applicable trade agreements and any exceptions invoked
23. Whether advance payments were made

Appendix D: Lessons learned report

Purpose

- To provide guidance in support of a lessons learned report, which the President of TB may require PSPC or SSC to provide within 90 business days after the end of the approved term to use the Exceptional Contracting Limit for Sustained Emergencies of National Importance (SENI limit). In such a case the following sets out the expected elements of the report.

Objective

- The objective of the lessons learned report is to analyze how PSPC or SSC has used its SENI limit for goods and services in response to a SENI to:
 - inform future SENI responses
 - inform TBS about whether any adjustments would be needed to the SENI limit or guidance

Elements

- The lessons learned report should, at minimum, discuss lessons learned and recommendations regarding the following 4 themes.

1. Governance and controls

- Explain how the SENI limit and the emergency contracting limit enabled the department to streamline its procurement process to support the government's response to the SENI. Include examples of key procurement files that have benefited from the use of these limits, as well as an overview of key trends (balance between directed and competitive).
- Explain how the department needed to be organized to respond to the situation and manage authorities related to the SENI and what the department learned about what worked or did not in the model. Identify any best practices. Provide an overview of the department's internal contract governance process for managing and approving contracts subject to the applicable exceptional / emergency contracting limits, including the SENI limits (for example, identify the enhanced internal contracting approval measures undertaken).
- Assess the processes that the department put in place to identify urgent requirements and triage procurements based upon competitive or non-competitive strategies.
- Describe the best practices that the department developed to ensure that any needed adjustments were recognized and made throughout the SENI, as well as the reasoning for these (such as audit reports, studies, consultations).

2. Capacity

- With respect to organizational capacity, describe lessons concerning the measures the department adopted throughout the course of the SENI to maintain capacity, mitigate the risk and impact of staff turnover/burnout, and ensure that institutional knowledge was broadly shared.

3. Reporting

- What was the department's experience meeting the mandatory reporting requirements that were put in place as part of the emergency and exceptional authorities? Describe the challenges faced in meeting reporting requirements and any recommendations to ensure that requirements are met in the future.
- The department should also note whether their expected use at the time of the request for access to the SENI limit was consistent with the actual outcome of their contracting requirements.

4. Other strategic considerations

- Indicate any areas where the SENI limit (and by extension, the department's emergency / exceptional contracting limits) did not achieve needed outcomes and suggest alternative approaches that might achieve different outcomes.
- Include any additional advice for TBS or departments for future use of a SENI limit.

Additional guidance

- While contextualizing what happened is important, the report itself should focus on the key lessons learned and recommendations that can be leveraged for the future.
- This analysis should also highlight any learnings or advice from the SENI contracting before receiving approval to use the SENI limit as appropriate.

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